रजिस्ट्री सं. डी. एल. (एन) 04/0007/2003–05 REGD. NO. D. L. (N) 04/0007/2003—05

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सं. 45] नई दिल्ली, नवम्बर 3—नवम्बर 9, 2019, शनिवार/कार्तिक 12—कार्तिक 18, 1941
No. 45] NEW DELHI, NOVEMBER 3— NOVEMBER 9, 2019, SATURDAY/KARTIKA 12— KARTIKA—18, 1941

इस भाग में भिन्न पृष्ठ संख्या दी जाती है जिससे कि यह पृथक संकलन के रूप में रखा जा सके
Separate Paging is given to this Part in order that it may be filed as a separate compilation

भाग II—खण्ड 3—उप-खण्ड (ii)
PART II—Section 3—Sub-section (ii)

भारत सरकार के मंत्रालयों (रक्षा मंत्रालय को छोड़कर) द्वारा जारी किए गए सांविधिक आदेश और अधिसूचनाएं

Statutory Orders and Notifications Issued by the Ministries of the Government of India
(Other than the Ministry of Defence)

श्रम एवं रोजगार मंत्रालय

नई दिल्ली, 30 अक्तूबर, 2019

का.आ. 1907.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार मेसर्स फ्रंटलाइन (एनसीआर) बिज़नेस सॉल्यूशंस प्राइवेट लिमिटेड कोलकाता और अन्य एवं उनके कर्मचारी के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, कोलकाता के पंचाट (संदर्भ संख्या 102/2015) को प्रकाशित करती है जो केन्द्रीय सरकार को 21.10.2019 को प्राप्त हुआ था।

[सं. एल-42011/161/2015-आईआर (डीयू)]

वी. के. ठाकुर, अनुभाग अधिकारी

MINISTRY OF LABOUR AND EMPLOYMENT

New Delhi, the 30th October, 2019

S.O. 1907.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 102/2015) of the Central Government Industrial Tribunal-cum-Labour Court, Kolkata as shown in the Annexure, in the Industrial dispute between the employers in relation to The

Frontline (NCR) Business Solutions Pvt Ltd. Kolkata & Others, and their workmen which were received by the Central Government on 21.10.2019.

[No. L-42011/161/2015-IR (DU)]

V. K. THAKUR, Section Officer

ANNEXURE

CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL AT KOLKATA

Reference No. 102 of 2015

Parties: Employers in relation to the management of M/s. Frontline (NCR) Business Solutions Pvt Ltd.

AND

Their workmen

Present: Justice Ravindra Nath Mishra, Presiding Officer

Appearance:

On behalf of the Management : Mr. S.K. Karmakar, learned counsel

On behalf of the Workmen : None

State: West Bengal. Industry: Telecommunication.

Dated: 1st October , 2019

AWARD

By Order No.L-42011/161/2015-IR(DU) dated 02.11.2015 the Government of India, Ministry of Labour in exercise of its powers under Section 10(1)(d) and (2A) of the industrial Disputes Act, 1947 referred the following dispute to this Tribunal for adjudication:

> *"Whether the action of the management of M/s. Frontline (NCR) Business Solutions, contractor of M/s Chennai Network Infrastructure Limited is justified by terminating the service of Shri Subinoy Shankar Doloi is legal and/justified? If not, what relief the workmen are entitled to? Whether the present contractor M/s. S&IB Services Pvt. Ltd. is justified by denying reinstatement u/s 25(H) of ID Act, 1947? If not, what relief the workman are entitled to?"*

2. When the case was taken up for hearing today, none appeared for the union, though learned counsel for M/s. S & IB Services Pvt. Ltd. was present. It transpires from record that this reference is pending in this Tribunal since 12.11.2015 but the union never appeared with proper authority nor filed statement of claim inspite of sufficient opportunity. Only M/s. S & IB Services Pvt. Ltd. entered appearance through its learned counsel who submitted that since the union has not filed statement of claim, management has nothing to answer and prayed for disposal of the case by passing an Award. Union is found absent since 22.05.2019, i.e., on three consecutive dates.

3. On consideration of the facts and circumstances of the case, it appears that the union has no grievance at present in respect of termination of the concerned workman, Shri Subinoy Shankar Doloi as mentioned in the order of reference. Therefore, there exists no dispute for adjudication.

4. Therefore, the reference is disposed of accordingly.

Justice RAVINDRA NATH MISHRA, Presiding Officer

Dated, Kolkata,

The 1st October, 2019

नई दिल्ली, 30 अक्तूबर, 2019

का.आ.1908.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार मेसर्स अध्यक्ष, केंद्रीय रेशम बोर्ड, मैसूर और अन्य एवं उनके कर्मचारी के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, बैंगलोर के पंचाट (संदर्भ संख्या 16/2000) को प्रकाशित करती है जो केन्द्रीय सरकार को 24.10.2019 को प्राप्त हुआ था।

[सं. एल-42012/209/1999-आईआर (डीयू)]

वी. के. ठाकुर, अनुभाग अधिकारी

New Delhi, the 30th October, 2019

S.O. 1908.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 16/2000) of the Central Government Industrial Tribunal-cum-Labour Court, Bangalore as shown in the Annexure, in the Industrial dispute between the employers in relation to The President, Central Silk Board, Mysore & Others, and their workmen which were received by the Central Government on 24.10.2019.

[No. L-42012/209/1999-IR (DU)]

V. K. THAKUR, Section Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, BANGALORE

DATED : 22ND OCTOBER 2019

PRESENT: JUSTICE SMT. RATNAKALA, Presiding Officer

C R 16/2000

I Party	**II Party**
Dr. K.S. Sharma, President, Central Silk Board Employees Union, New 59, 6th Cross, K.R. Vanam, Mysore - 570 008.	The Director, National Silkworm Seed Project, Central Silk Board, CSB Complex, Madiwala, Bangalore - 560 068.

Appearance

Advocate for I Party : Mr. V.S. Naik

Advocate for II Party : Mr. N. S. Narasimha Swamy

AWARD

The Central Government vide Order No. L-42012/209/99-IR(DU) dated 27.01.2000 in exercise of the powers conferred by Clause (d) of Sub-Section (1) and Sub-Section2(A) of Section 10 of Industrial Dispute act, 1947 (for brevity 'the Act' hereafter) referred the following Industrial Dispute for adjudication.

"Whether Sh. D.M. Nagaraj, former time scale Farm worker is justified to claim re-employment from Central Silk Board, Bangalore? If not, to what relief the said workman is entitled?"

1. The claim of the 1st Party workman is,

He was appointed by the 2nd Party as a casual labourer w.e.f 01.01.1985; he was brought in Timescale at 500-10-700 vide memorandum dated 30.10.1992, in accordance with this scheme prevailing in the Central Silk Board. During 1996 he fell sick and was hospitalised, he was advised by the Doctors to take rest; he had informed the 2nd Party regarding his requirement of leave. The 2nd Party issued a notice calling upon him to report to duty saying that he remained absent unauthorisedly from 29.09.1996 to 24.01.1999; after recovery he reported to duty. The 2nd Party issued a memorandum

dated 12.01.1999 directing him to appear before the District Surgeon Medical Board on 22.01.1999 accordingly he appeared before the Medical Board and a Medical Report in his favour was given by the Board; still 2nd Party did not take him back to duty, he approached the Central Silk Board Employees Union with his grievance. The union addressed a letter to the Management on 24.04.1999 requesting to permit the workman to report for duty. Vide letter dated 18.05.1999 2nd Party rejected his request. Left with no choice he raised the Industrial Dispute. After failure of the conciliation proceeding the dispute was referred to this Tribunal on 27.01.2000; thereafter the 2nd Party on 03.02.2000 issued articles of charge to him calling for his reply. It was alleged that he remained absent from duty unauthorisedly which amounts to misconduct; the 1st Party approached the Hon'ble High Court challenging the issue of articles of charge after reference of the dispute in W.P No. 10796/2000 (L), the Writ Petition was allowed and the articles of charge was quashed. The action of the 2nd Party in refusing employment vide memo dated 18.05.1999 is arbitrary and illegal. Charge sheet was not issued to him prior to 18.05.1999 and no Departmental Enquiry was held against him. He has worked continuously from 01.01.1985. The action of the 2nd Party amounts to retrenchment as defined under sec 2(oo) of 'the Act' without complying the mandatory requirement of sec 25-F of 'the Act'. The 2nd Party has employed several hundreds of workmen and their action is violative of mandatory requirements of Chapter VA and VB of 'the Act'.

2. 2nd Party countered the claim on following lines:

He was irregular in his work and remained unauthorisedly absent on several occasions; on his unauthorised absence from 29.09.1996 he was issued memorandum 25.11.1996 calling upon him to report to duty immediately, otherwise to take Disciplinary Action for the misconduct of unauthorized absence. But he did not choose to attend the duty, several memos were issued thereafter also but he did not resume duty. Finally, he was issued memorandum dated 09.09.1998 informing that he was to report to duty immediately, failing which his services would be terminated for unauthorised absence. In spite of the notice he did not report to duty. A Medical Certificate obtained from Superintendent of Bowring and Lady Curzon Hospital, Bangalore was received from him; on finding discrepancy in the Medical Certificate he was referred to the Medical Board for examination, the medical Board after examining him certified that he was fit enough to report for duty. But the Management did not accept the decision of the Medical Board and issued a memo dated 18.05.1999, there is a ban in the 2nd Party from 1992 to engage casual workers because of the surplus strength of the workers; various Voluntary Retirement Schemes are introduced, the 2nd Party is in the process of reducing the number of workers in a fair manner. In this background his request for re-employment was rejected. He has remained unauthorisedly absent for more than 3 years and the action of the 2nd Party is proper and justified.

3. Both parties have adduced evidence and addressed their arguments.

The 1st Party during his evidence has produced a Photostat copy of his representation dated 13.11.1998 seeking leave for 18 days on medical ground upto 01.12.1998. But the said letter does not bear the seal of the office which received the representation. The copies of the medical prescriptions, certificates are illegible for a bare reading.

The 2nd Party has produced the Photostat copies of the six memos served on the workman commencing from 25.11.1996 to 29.10.1998, whereby he was called upon to report to duty. Ex M-3 is the letter from the District Surgeon addressed to the Deputy Director of the 2nd Party stating that, he is fit to duty from 25.01.1999 and his medical reports are countersigned and returned for sanction of leave. As per the said letter the relevant documents produced by him during Medical Examination on 22.01.1999 for having taken treatment were perused by the District Surgeon and countersigned and were returned for sanction of leave. However, said recommendation is not acted upon.

4. What surfaces from the pleading and the evidence of the parties is, 1st Party workman remained absent from 29.09.1996. There is no evidence that prior to going on leave he had applied for leave or had the previous sanction for the leave. On his own showing he attended the duty on 10.05.1999. The final Memorandum vide annexure W-7 dated 18.05.1999 reads thus:

> *Attention of Sri. D.M. Nagaraja, TSFW, SSPC, Bangalore is invited on the subject cited above, it is informed that request of Sri. D.M. Nagaraja TSFW, SSPC, Bangalore to take him back for work by condoning his unauthorized absence w.e.f. 29.09.96 to 24.01.99 on medical grounds is examined. As per records Sri D.M. Nagaraja TSFW, SSPC, Bangalore remained on unauthorized absence from work w.e.f. 29.09.96 till date. He was issued several Notices/Memos from time to time. But he did not report back for work. He did not apply for any kind of leave. His long unauthorized absence from work shows that he is not interested in work. Further, he left the work on his own. Therefore his belated request for treating his unauthorized absence on medical grounds is not (NOT) considered for lack of merits.*
>
> *Further, in other units of NSSP already surplus number of labourers are available and board is reviewing number of labourers are available and Board is reviewing proposal of reduction or re-adjusting the surplus labourers. There is no requirement of labourers in any units of NSSP, Moreover, due to closure of National Sericultural Project, scaling down of activities and re-structuring of National Silkworm Seed Project, surplus labourers are found in some units.*

Under the circumstances, the request, of Sri. D.M. Nagaraja for taking him back for work as TSFW at Silkworm Seed Production Centre, Bangalore or at any other unit of National Silkworm Seed Project is not (NOT) considered. However, in case of any future requirement, his case will be considered.

5. He is an employee who is brought on Timescale of pay and had served continuously ever since his initial appointment of 01.01.1985. It is no-where pleaded by the 2nd Party that unauthorised absence for a long period would automatically seize the employment of an employee. It is not shown by the 2nd Party that 1st Party was appointed for the purpose of project work only. The very fact that after reference of the dispute by the Government to this Tribunal they issued a charge sheet to him, probably to legalise their action of refusal of employment indicates that the conduct rule of the 2nd Party warrants Departmental Enquiry prior to imposing punishment order.

6. In the event they wanted to reduce or readjust the surplus labourers with them, they could not have done so without complying the mandatory provisions of Chapter VA and VB of 'the Act'. The continuous service rendered by the 1st Party workman ever since his initial appointment, being an admitted fact there cannot be any termination without following the mandatory requirement of sec 25-F of 'the Act'. That justifies the claim by the 1st Party workman for re-employment. Hence, my answer to the referred issue in this schedule is in the affirmative.

7. In the usual course whenever a termination is found illegal in an Industrial adjudication that follows reinstatement with continuity of service and back wages as found justifiable. Here is the workman who has remained unauthorisedly absence for about 32 months the bonafides of the said absence is yet to be convincingly asserted, that apart the activities of the 2nd Party appears to be gloomy by virtue of closure of National Silkworm Seed Project. Considering the scenario, I hold the workman is not entitled for back wages.

AWARD

The reference is accepted.

The claim of the 1st Party workman Sh. D. M. Nagaraj for re-employment from the Central Silk Board Bangalore is justified. The 2nd Party is directed to reinstate the workman to his original post with continuity of service, without back wages within 60 days from the date of publication of this Award in the Official Gazette.

(Dictated to O/s Steno, transcribed by her, corrected and signed by me on 22nd October 2019)

JUSTICE SMT. RATNAKALA, Presiding Officer

नई दिल्ली, 30 अक्तूबर, 2019

का.आ.1909.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार मेसर्स प्रबंध निदेशक, यू.आर. इंफ्रास्ट्रक्चर कंपनी प्राइवेट लिमिटेड बिलासपुर, हिमाचल प्रदेश और अन्य एवं उनके कर्मचारी के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, चंडीगढ़ के पंचाट (संदर्भ संख्या 180/2011) को प्रकाशित करती है जो केन्द्रीय सरकार को 25.10.2019 को प्राप्त हुआ था।

[सं. एल-42012/273/2010-आईआर (डीयू)]

वी. के. ठाकुर, अनुभाग अधिकारी

New Delhi, the 30th October, 2019

S.O. 1909.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 180/2011) of the Central Government Industrial Tribunal-cum-Labour Court Chandigarh as shown in the Annexure, in the Industrial dispute between the employers in relation to The Managing Director, U.R. Infrastructure Company Private Ltd. Bilaspur, Himachal Pardes & Others, and their workmen which were received by the Central Government on 25.10.2019.

[No. L-42012/273/2010-IR (DU)]

V. K. THAKUR, Section Officer

ANNEXURE

IN THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT-II, CHANDIGARH

Present: Sh. A. K. Singh, Presiding Officer

ID No. 180/2011

Registered on:-08.06.2011

Suresh S/o Dev Raj, Vill. & PO Noa, Tehsil Sadar, Distt. Bilaspur (HP). …Workman

Versus

1. The Managing Director, M/S. U.R. Infrastructure Company Private Ltd., Kol Dam Hydro-Electric Power Project, Chhamb, Post Office Harnora, Tehsil Sadar, District Bilaspur, Himachal Pardesh.

2. The Project Manager, M/s. Italian Thai Development Public Company Ltd., Kol Dam Hydro Electric Power Project, Village Kyan, Post Office Slapper, Tehsil Sundernagar, District Mandi, Himachal Pradesh, through its Project Manager.

3. The General Manager, M/s. NTPC Limited, Kol Dam Hydro Electric Power Project, Barmana, Tehsil Sadar, District Bilaspur, Himachal Pradesh. …Respondents/Managements

AWARD

Passed on:-07.10.2019

Central Government vide Notification No. L-42012/273/2010-IR(DU) Dated 06.05.2011, under clause (d) of sub-section (1) and sub-section (2A) of Section 10 of the Industrial Disputes Act, 1947(hereinafter called the Act), has referred the following Industrial dispute for adjudication to this Tribunal:-

> **"Whether the retrenchment of services of Shri Suresh S/o Late Dev Raj w.e.f. 03/09/2008 by M/s. U.R. Infrastructure Company Private Limited, Chamb, Bilaspur, a sub contractor of M/s Italian Thai Development Public Limited a contractor of M/s NTPC Limited without following the principal of 'last come first go' is legal and justified? What relief the workman is entitled to?"**

1. Both the parties were served with notices. The workman appeared and filed statement of claim, alleging therein, that respondent/management no.3 i.e. General Manager, NTPC Ltd. Kol Dam Hydro Electric Power Project, Barnama, is the principal employer and respondent no.2 is the main contractor for respondent no.1 while respondent no.1 is sub-contractor/petty contractor for respondent no.2. The respondent no.2 is engaged for the construction of the Kol Dam Hydro Electric Power Project at Harnoda for power generation. The workman was appointed through respondent no.1 and he joined as Driver in the Skilled Workman category on 28.12.2004 and worked continuously till 03.09.2008 when the employer retrenched the services. The workman was earning wages at the rate of Rs.5,000/- per month. He was retrenched by the employer without any notice or without any compensation as per the provisions of Section 25-F of the Industrial Disputes Act, 1947 while juniors were retained in service which is violation of Section 25-G of the Industrial Disputes Act. It is further stated that there are 700 number of workers working day and night on the project and management is continuously making appointments in various departments but it is surprising that even after raising the demand notice under Section 2-A of the Industrial Disputes Act, 1947, the respondents/managements did not reinstate the services of the workman. The workman after the retrenchment tried his best to find employment but failed to do so because of the present case against the employer and management. Hence, it is prayed that order be passed in favour of the workman for his reinstatement in the interest of justice.

2. Respondent No.1 i.e. M/s. U.R. Infrastructure Company Private Ltd., Village Chamb, Post Office Harnora, Bilaspur, has not filed any written statement.

3. Respondent No.2 i.e. Project Manager, Italian Thai Development Co. Ltd., Kol Dam Hydra Electric Power Project, Village Kayan, PO Slapper, Teh. Sundernagar, Mandi(HP), has filed its written statement with the averment that workman has worked with its contractor intermittently and not continuously as alleged. It is further alleged that workman was paid Rs.3,605/- as last drawn salary. Workman was issued warning from time to time for his misconduct. Respondent made strictly in accordance with law under compelling circumstances on partial completion of work. As a matter of fact, the construction work at site is leading to completion hence the averments made by the workman in Para 6, 7 and 8 of the claim statement are misleading and misconceived. The workman is gainfully employed and the

answering respondent reserves its right to prove the fact of gainful employment at an appropriate stage. The claim petition has no force and is liable to be dismissed.

4. Respondent No.3 i.e. The General Manager, M/s. NTPC Limited, Kol Dam Hydro Electric Power Project, Barmana, has submitted its written statement, alleging therein that it was not the employer of the workman and answering respondent engaged respondent no.2 for construction of said dam who further engaged respondent no.3 as a sub-contractor and the workman was appointed by respondent no.3. The answering respondent has no concern whatsoever and has not the appointing authority in the present case. The facts alleged in the claim petition are misleading just to harass the answering respondent. It is further submitted that the Government of India has made terms of reference in respect of the industrial dispute between workman and M/s Italian Thai Development Ltd., who has been engaged as contractor and M/s. AKS Engineers as sub-contractor by answering respondent. It is further alleged that the Kol Dam Hydro Project has not termed as an industrial establishment as per law.

5. In order to prove his case, workman Suresh has not submitted his affidavit as evidence in spite of the several opportunities given to him.

6. Respondent No. 1 and respondent no.3 has not filed any evidence in the form of affidavits.

7. Respondent No.2 has examined Sh. Hem Raj Sharma, who has filed his affidavit as oral evidence.

8. Perusal of the file reveals that there is nothing as documents regarding the services rendered by the workman to respondent no.2 and respondent no.3 but the facts are admitted in their written statement that workman was employed by sub-contractor respondent no.1 and worked intermittently not continuously. Thus, as per the settled position of law, burden lies on the workman to prove the averments made in the claim statement. The workman has not submitted his affidavit in support of the facts alleged in the claim petition but in spite of the several opportunities, he did not ensure his presence before the Tribunal to be cross-examined by the management. As such, legally speaking, the evidence submitted in the form of affidavit by the workman has no force in the eye of law and it will be not read in evidence, resulting the case of no evidence.

9. Having gone through the factual and legal proposition, I am of the view that claimant is not entitled for any relief and the claim petition is liable to be dismissed and the reference is answered accordingly.

A. K. SINGH, Presiding Officer

नई दिल्ली, 30 अक्तूबर, 2019

का.आ. 1910.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार मेसर्स महाप्रबंधक, एनटीपीसी लिमिटेड, गौतम बुद्ध नगर (यू.पी) और अन्य एवं उनके कर्मचारी के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय-2, नई दिल्ली के पंचाट (संदर्भ संख्या 57/2011) को प्रकाशित करती है जो केन्द्रीय सरकार को 21.10.2019 को प्राप्त हुआ था।

[सं. एल-42011/26/2011-आईआर (डीयू)]

वी. के. ठाकुर, अनुभाग अधिकारी

New Delhi, the 30th October, 2019

S.O. 1910.—In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 57/2011) of the Central Government Industrial Tribunal-cum-Labour Court-2, New Delhi as shown in the Annexure, in the Industrial dispute between the employers in relation to The General Manager, NTPC Limited, Gautam Buddh Nagar (UP) & Others, and their workmen which were received by the Central Government on 21.10.2019.

[No. L-42011/26/2011-IR (DU)]

V. K. THAKUR, Section Officer

ANNEXURE

CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT-II, NEW DELHI

Present: Smt. Pranita Mohanty, Presiding Officer,
C.G.I.T.-Cum-Labour Court-II, New Delhi

INDUSTRIAL DISPUTE CASE NO. 57/2011

Date of Passing Award- 28th August, 2019

Between:

Shri Mukesh Kumar Raghav
S/o Shri Sompal Singh,
Through-Shri Ompal Singh,
Labour Law Advisor,
Prem Singh Bhawan, Harola Sector-5,
Noida, Gautam Budh Nagar … Workman

Versus

1. The General Manager
NTPC Limited,
NCPS, Dadri, PO-Vidyut Nagar
Gautam Buddh Nagar (U. P.)

2. M/s. PCP International Limited,
SCO, 415-416, Sector-35-C,
Chandigarh. …Managements

Appearances:—

Shri N.S. Berchiwal (A/R)	For the Workman.
Shri Rajesh Mahindru	For the Management No. 1
Shri Balwant Singh (A/Rs)	For the management No. 2

AWARD

The Government of India in Ministry of Labour & Employment has referred the present dispute existing between employer i.e. the management of NTPC Limited, and its workman/claimant herein, under clause (d) of sub section (1) and sub section (2A) of section 10 of the Industrial Dispute Act 1947 vide letter No. L-42011/26/2011 (IR(DU) dated 08.09.2011 to this tribunal for adjudication to the following effect.

> "Whether the action of the management of M/s. PCP International Limited, a contractor of NTPC Limited, Dadri, in terminating the services of workman Shri Mukesh Kumar Raghav, without complying with section 25-F, G, H is legal and justified? What relief the workman is entitled to?"

Both parties were noticed and the claimant Mukesh Kumar Raghav filed the claim statement with the averment that he was appointed in the post of technician in the Boiler Maintenance department of the management No. 1 i.e. NTPC as a permanent employee on a monthly salary of 3060/-. His appointment was on the basis of an oral order. The claimant continuously worked with the management No.1 till 07.07.2005 and had worked for 240 days or more in the preceding calendar year. During the course of employment he was discharging the duty at par with the permanent employees of NTPC working in the similar post. But he was subjected to discrimination since no appointment letter identity card, salary slip, leave book etc were supplied to him despite demand. Though he was working in the post of the skilled worker the management was paying him remuneration as a helper. The management no.2 contractor is no way related to the employment of the workman who was discharging the work of management no.1 and an employee of the said management. Being aggrieved by the order of termination he approached the conciliation officer in the office of the Labour Commissioner but to no avail due to the adamant attitude of the management. The management has engaged new hands in his place and still having vacancies. It is also pleaded that the workman is unemployed from the date of illegal termination of his service. Thus, by filing the claim he has prayed that the management No.1 be directed to reinstate the claimant in the post last held by him with the benefit of continuity of service, back wages etc.

The management No.1 i.e. NTPC resisted the claim of the workman by filing the WS and took a preliminary objection that there exist no employer and employee relationship between the NTPC and the workman. In the reference there is no mention about any relief sought by the claimant from the NTPC and in that view of the matter the proceeding against the NTPC is not maintainable. It has further been pleaded that the NTPC is a Government of India undertaking and engages different contractors for execution of different works including maintenance of its plant sites. As seen from the pleadings and the claim filed before the conciliation proceeding by the claimant it appears that he was engaged by the contractor M/s PCP International Limited. The claimant having not been engaged by NTPC at any point of time the question of his termination by NTPC doesn't arise. As such NTPC is also not liable for violation of the provision of 25-F, 25-G and 25-H of the ID Act. It has also been pleaded that the management NTPC never maintains or displays the seniority list of the workmen engaged by the contractor.

The management No. 2 PCP International filed WS refutting the stand of the workman and pleaded that the said workman was engaged as a semi skilled worker at NTPC Dadri Maintenance Site as a contract labour through PCP International which is registered under contract labour Regulation and Abolition Act 1970. Hence, his demand for regular employment is not valid. The engagement of the claimant came to an end when the contract of PCP international with NTPC ended. The claimant was paid all his dues towards full and final settlement according to law. But the claimant refused to receive the same and filed an application before the Laour Commissioner Noida. Being noticed though the management No. 2 appeared before the Labour Commissioner the claimant did not appear and for his non appearance the claim was dismissed by order dated 07.02.2008. The claimant again raised a dispute before the authority under Payment of Wages Act and management was noticed. During adjudication it was held that the claimant has already received Rs. 15,754/- towards full and final settlement. Thereafter the claimant filed another application before the Assistant Labour Commissioner Dehradun demanding reinstatement in the service of NTPC. The NTPC as well as the management No. 2 appeared through their representatives and after a discussion though the Assistant Labour Commissioner suggested for amicable settlement the management No. 2 did not agree for the end of its contract with the management No.1 viz. NTPC. The claim of the claimant for regularization of its service by NTPC or by PCP international is not maintainable and liable to be dismissed.

In view of the pleadings of the parties the points which need to be determined for adjudication are:

1. If there exist any relationship of employer and employee between the NTPC and workman.

2. If the service of the workman was illegally terminated by PCP international i.e. Management No. 2 without complying the provisions of 25-F, G and H of the ID act.

3. To what other relief the workman is entitled to.

The claimant testified as WW1 and proved the documents which were marked in a series of WW1/1 to WW1/5. These are the log book of the night permission given by CISF for entry into the premises of NTPC wherein the name of the claimant appears at serial No.30, the gate pass, 3 certificates issued by different contractors certifying that the claimant was working for them. Similarly on behalf of the management No.2 one of its Administrative Officer testified as MW1 and proved a document exhibit MW1/1 which is in the nature of the undertaking given by the claimant. Similarly on behalf of the management i.e. NTPC one of its manager testified as MW2 but no document was proved by him.

FINDINGS

Point No. 1

In it's pleadings the management No.1 NTPC has taken a clear stand that there never existed any relationship as employer and employee between NTPC and the claimant. It has been clarified that the NTPC after commissioning of its plant engages contractors for maintenance of its boilers and auxiliaries. The contract are awarded through proper bidding for a specific period and the contractors are often changed after the time stipulation. Those contractors use to employ several persons for execution of the works as per the contract. The claimant might have been engaged by one such contractor and his claim for reinstatement and continuity in service in the establishment of NTPC is not maintainable.

Though this assertion of NTPC has been denied by the claimant no evidence to rebutt the same has been adduced. On the contrary during cross examination the claimant has admitted in clear terms that he has no document like appointment letter, salary slip etc issued to him by NTPC. In view of such admission and in absence of any evidence to the contrary it is held that there exist no relationship as employer and employee between NTPC the management no.1 and the claimant. This point is accordingly answered.

Point No. 2

The next pertinent point to be adjudicated is whether the action of the management No. 2 PCP International was illegal in terminating the service of the claimant without complying the provisions of 25-F,G,H of the Id Act. In this regard the admitted facts are that the claimant was working in the site of NTPC with effect from 03.01.2003 in the boiler maintenance department. It is also admitted by the management No. 2 that if he was so engaged by management No. 2

and which was co-terminus with the contract. The dispute raised by the claimant is not maintainable since the scope of the employment has seized with the end of the contract.

The witness examined on behalf of the management No. 2 Mr. Amrik Singh has stated that at the end of the contract the service of all the employees of the Agency came to an end and they were duly notified about the same. Not only that the employees including the claimant where given their monetary entitlements towards full and final settlement as per the Contract Labour Abolition and Regulation Act 1970. Whereas all other employees accepted the same the claimant refused to accept and raised a dispute before the Labour Commissioner in the year 2007. Being noticed the representative of this management though appeared the claimant did not appear and for his default the complaint was dismissed by the Labour Commissioner by order dated 07.02.2008. When the Labour Commissioner issued notice to this management in the year 2007, the management as an abundant caution send the amount of Rs. 15,754/- by demand draft dated 24.03.2008 and the claimant/workman received the same. After that the claimant again raised a dispute in the year 2008 before the authority under the minimum wages Act. Objection being raised by this management that proceeding was disposed of with observation that the claimant has already taken 15,754/- towards full and final settlement. However Rs. 1000 was imposed as fine on the management which was paid too. Again the workman filed application before the Labour Commissioner in 2010 claiming reinstatement by NTPC and being noticed the parties participated in the conciliation but the Appropriate Government referred the matter to this tribunal.

Thereby the management No. 2 has pleaded that the termination of the service of the workman was made following all procedure of law and his prayer for reinstatement is not tenable. To support its stand the Ld. A/R for the management No. 2 pointed out the evidence of the claimant elicited during cross examination where he had admitted about receipt of 15,754/-.

But no document has been filed by the management No. 2 for complying the provisions of 25-F,G,H of the ID Act. There is no evidence on record placed by the management No. 2 that the seniority list was displayed and the Rule of last come first go was followed at the time of the termination of the claimant. There is absolutely no evidence on record to prove that the notice or notice pay, was paid to the claimant. Even if it is accepted that 15,754/- was paid in shape of Bank Draft it cannot be concluded at this stage that the same was towards compliance of the provisions of section 25-F,G,H of the ID Act. If at all the statutory provisions was complied the management No. 2 being in possession of the documents relating to the same could have produced the documents. The documents having not been produced by management No.2 the one and only conclusion is that the provisions of section- 25F,G,H were not complied at the time of termination of the service of the workman and he is entitled to compensation of the same as prayed for. The amount of Rs. 15,754/- if at all paid to the claimant the same cannot be computed towards the compensation for retrenchment or notice pay. This issue is accordingly answered in favour of the workman.

POINT No. 3

In view of the finding arrived While deciding point no.1 and 2it is held that the termination of the service of the workman by management no. 2 i.e. M/s PCP International Limited is illegal for non compliance of the provisions of section 25-F,G, H of the ID Act. The workman is entitled to the relief of the compensation for such non compliance. Considering the facts that the claimant after the alleged termination had to run from pillar to post for more than 10 years it is directed that the management No. 2 shall pay Rs. 35000/- as compensation to the claimant which shall be paid within 2 months from the date of notification of this award, failing which the amount shall carry interest @ 9% per annum from the date of the notification of the award till the final payment is made. Hence, ordered.

ORDER

The claim be and the same is allowed on contest against management No. 2 and dismissed against management No.1. The reference is accordingly answered. The management No. 2 is directed to pay Rs. 35000/- as compensation to the claimant which shall be paid within 2 months from the date of notification of this award, failing which the amount shall carry interest @ 9% per annum from the date of the notification of the award till the final payment is made. Send a copy of this award to the appropriate government for notification as required under section 17 of the ID act 1947.

28th August, 2019

The reference is accordingly answered.

Dictated & Corrected by me.

PRANITA MOHANTY, Presiding Officer

नई दिल्ली, 30 अक्तूबर, 2019

का.आ. 1911.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार मेसर्स रजिस्ट्रार, जवाहर लाल नेहरू विश्वविद्यालय, नई दिल्ली और अन्य एवं उनके कर्मचारी के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय-2, नई दिल्ली के पंचाट (संदर्भ संख्या 24/2016) को प्रकाशित करती है जो केन्द्रीय सरकार को 21.10.2019 को प्राप्त हुए थे ।

[सं. एल-42011/26/2016-आईआर (डीयू)]

वी. के. ठाकुर, अनुभाग अधिकारी

New Delhi, the 30th October, 2019

S.O. 1911.—In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 24/2016) of the Central Government Industrial Tribunal cum Labour Court -2 New Delhi as shown in the Annexure, in the Industrial dispute between the employers in relation to The Registrar, Jawahar Lal Nehru University, New Delhi & Others, and their workmen which were received by the Central Government on 21/10/2019.

[No. L-42011/26/2016-IR (DU)]

V. K. THAKUR, Section Officer

ANNEXURE

CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL CUM LABOUR COURT No. 2: NEW DELHI

PRESENT : SMT. PRANITA MOHANTY, Presiding Officer, CGIT-cum-Labour Court-II, New Delhi

INDUSTRIAL DISPUTE CASE No. 24/2016

Date of Passing Award : 23rd September, 2019

Between :—

Shri Ramay,
S/o. late Shri Nathan,
lastly posted at Jawahar Lal Nehru University, New Delhi
through Delhi Labour Union,
Agarwal Bhawan, GT Road,
Tis Hazari, Delhi-110054. …Workman

Versus

The Management of Jawahar Lal Nehru University,
Through its Registrar,
New Delhi-110067. …Management

Appearances :—

Shri Rajiv Aggarwal, A/R For the Workman

None For the Management

AWARD

The Government of India, Ministry of Labour vide letter No. L-42011/26/2016/IR(DU) dated 29.03.2016 has referred the present dispute between the workman Ramay and the Management of JNU, to this Tribunal under clause (d) of sub-section (1) and sub-section (2A) of Section 10 of the Industrial Disputes Act, 1947 (in short the Act) for adjudication to the following effect :—

'Whether the action of the management in retiring the workman on 13.03.2015 on the basis of date of birth shown in Pan Card is legal and/or justified and to what relief the workman is entitled to and what directions are necessary in this respect?'

2. Both parties were put to notice and the claimant filed statement of claim which was duly replied by the Management by filing written statement. As per pleadings of the parties, admitted facts of the case are as follows.

Admitted Facts

The workman/claimant joined the service of the Management as daily wager Khalasi on 15th April, 1998. He was awarded temporary status of the post on 29/9/2007. His services were regularized by the Management w.e.f. 23rd December, 2013 vide communication dated 20/1/2014. Through a notorised affidavit dated 28/12/2007, the workman furnished his date of birth as 12th October, 1972.

3. The Management issued a memorandum dated 5/3/2015 to the workman, stating that as per notorized affidavit, his date of birth was mentioned as 12/10/1972, whereas his PAN Card showed his date of birth as 5/2/1955. It is pleaded that though the claimant/workman submitted his explanation vide reply dated 9/3/2015, yet the Management retired/terminated his services vide communication dated 13/3/2015 which action of the Management is totally bad, unjust and illegal because the Management did not consider the reply of the illiterate workman, who had submitted a duly sworn affidavit at the time of regularization of his services, showing his date of birth as 12/10/1972 as told to him by his elders; that if date of birth is taken as 5/2/1955, in that eventuality at the time of joining he was aged 43 years which position is not correct as a person aged 43 years can not join a fresh service; that neither any memo nor any charge sheet was given to him. No domestic enquiry was conducted against the workman and even he was not afforded any opportunity of hearing prior to his termination. The workman claimed to be totally unemployed since the dte of his termination. Demand notice dated 27/4/2015 was sent to the Management but to no response. Thereafter, conciliation proceedings were initiated but resulted into failure, due to adamant & non cooperative attitude of the Management. He has prayed for setting aside the Management's order dated 13/3/2015 and for reinstatement into service with full back wages & all consequential benefits –monetary or otherwise.

3- The statement of claim has been resisted by the Management who filed written reply, contending that controversy over date of birth of Shri Ramay arose when two different dates of birth were mentioned him at different stages, while furnishing record to the Management inasmuch through his notorized affidavit he gave his date of birth as 123/10/1972, whereas his PAN Card (AXKPR7227H showed his date of birth as 5/2/1955. The workman was asked to produce an authentic document in support of his date of birth but he failed to do so. Another opportunity was granted to the workman and was asked to produce his Voter ID card which was not given by the workman. It is alleged that the Management followed the principle of natural justice as the workman was given adequate opportunity to be heard but he did not come forward with any other proof regarding his date of birth, including an affidavit attested by a Gazetted Officer or a Magistrate. Plea of the workman that date of birth in PAN Card was entered incorrectly is not tenable as PAN card was issued by the statutory organization. Electoral Roll of 2015 also showed his age to be 55 years and that of his wife as 53 years. The workman also did not produce any evidence to show that he had sought correction of his date of birth either in the PAN card or Electoral Roll. While denying the allegations of the workman, it has been stated that the workman was retired from service on meeting the conditions of superannuation, based on his DOB as shown in the most authentic and recent document viz. PAN card submitted by him. Prayer has been made for directing the workman to cooperate with the Management by submitting his retirement papers to ease releasing his retiral benefits.

4- The workman/claimant filed rejoinder, reiterating his own case as set up in the statement of claim and denied the allegations of the Management.

5- Vide order dated 30/1/2017 my learned Predecessor framed following issues and parties were called upon to lead their evidence :-

1) Whether the action of the management in retiring the workman on 13/3/2015 on the basis of date of birth shown in the PAN Card is legal and/or justified ?

2) To what relief the workman is entitled to ?

6- The workman /claimant examined himself as WW1 and led evidence by way of affidavit Ex.WW1/A. He placed reliance on documents Ex.WW1/1 to Ex.WW1/14. On the other hand, none came forward on behalf of the Management either to cross examine the workman The matter was proceeded ex parte against the Management vide order dated 10/7/2018. In fact, the Management did not lead any evidence either to rebut the case of the workman or to prove its defence.

7- I have heard arguments from A/R of the workman/claimant and have also gone through the records carefully. My findings on the above issues are as follows.

ISSUE No. 1 and 2 :-

8- Both these issues being inter-connected are taken up together and can be disposed off conveniently by common discussion.

9- At the outset I may mention that relationship of employer-employee between the parties is not in dispute. Testimony of the workman/claimant by way of affidavit Ex.WW1/A is in line with the averments made in the claim petition and same has gone unchallenged and unrebutted. The workman has filed on record copy of legal demand notice sent to the Management and its postal receipt as Ex WW1/1 & Ex.WW1/2; copy of the statement of claim filed before ALC as Ex.WW1/3; copy of reply thereto by the Management as Ex.WW1/4; rejoinder thereto as Ex.WW1/5; reply to rejoinder submitted by Management before ALC as Ex.WW1/6; copy of notification dated 31/3/2015 (Ekx.WW1/7) issued by the Management whereby the workman was superannuated from services w.e.f 28/2/2015; copy of declaration dated 31/12/2007 (Ex.WW1/8) furnished by the workman at the time when temporary status to the post of Khalasi was granted to him wherein he gave his date of birth as **12/10/1972;** copy of the identity card as Ex.WW1/9 **;** copy of the memo dated 5/3/2015 issued by the Management to the workman as Ex.WW1/10 and reply thereto given by the workman as Ex.WW1/11; copy of the notarized affidavit dated 28/12/2007 (Ex.WW1/12) whereby he had given his date of birth as **12th October, 1972**; copy of the office note dated 13/3/2015 (Ex.WW1/13) of the Management whereby Supdt.Engg.(Civil) was requested not to take attendance from the workman and also stop allocating any job to him till matter under investigation was resolved; copy of corrected PAN Card (Ex.WW1/14) showing his date of birth as **12/10/1972.**

10- In short, plea of the workman is that action of the Management in pre-maturely retiring him from service w.e.f 1/3/2015, amounts to retrenchment/termination. Per-contra, stand of the Management is that since the claimant/workman had attained the age of superannuation, it was not a case of retrenchment/termination. This Tribunal is conscious of the fact that retirement of the workman on reaching the age of superannuation has been expressly kept out of the definition of retrenchment, as provided under Section 2(oo) of the Act. Sub-clause (b) of Section 2(oo) of the Act which reads as under, excludes the case of superannuation :—

"Section 2(oo) "retrenchment" means the termination by the employer of the service of a workman for any reason whatsoever, otherwise than as punishment inflicted by way of disciplinary action, **but does not include** -

(a).....

(b) **retirement of the workman on reaching the age of superannuation** if the contract of employment between the employer and the workman concerned contains a stipulation in that behalf; .."

However, it is fairly settled that so as to attract the provisions of sub-clause (b) of Section 2(oo) as reproduced above, two tests are required viz. (1) a stipulation in regard to the time of retirement in the contract of service between the employer, and (ii) the stipulation must be in regard to the age of superannuation. Reference in this respect may be made to the decision of Hon'ble High Court of Calcutta in the case of **Tollygunge Club Ltd. Vs. Fifth Industrial Tribunal & others. MANU/WB/0327/1984.**

11- The claimant/workman had furnished his declaration dated 31/12/2007 (Ex.WW1/8) to the Management **alongwith** the notorized affidavit (Ex.WW1/12), at the time when temporary status to the post of Khalasi was granted to him, had disclosed his date of birth as **12/10/1972. There is** nothing on record to suggest that the Management at that time had made any objection about the date of birth/age of the workman as disclosed in the affidavit or about the attestation of the affidavit by Notary. Rather the date of birth was recorded in the service records of the workman/claimant on the basis of Ex.WW1/8 and Ex.WW1/12. Hence the date of birth of the claimant stipulated in the service records was as 12/10/1972. According to that, the claimant on attaining the age of 60 years, was/is supposed to be superannuated on 31st October, 2032 and not earlier. However, in the year 2015 controversy arose when the workman/claimant allegedly furnished copy of his PAN Card, showing his date of birth as **5th February, 1955. It is** worthwhile to mention here that the Management has not filed on record copy of the PAN Card of the claimant wherein his date of birth was shown as 5/2/1955. Even if it is assumed for the sake of arguments that the claimant had himself furnished copy of the PAN Card to the Management, showing his date of birth as 5/2/1955 and he had falsely disclosed his date of birth in the affidavit Ex.WW1/2, in that eventuality also the Management was required to probe the matter in proper perspective and to hold domestic enquiry in a fair and proper manner against the workman for his misconduct and/or to get medical examination of the workman/claimant so to prove his misconduct. It seems that nothing of the sort was done by the Management. Rather the Management hurriedly rejected the reply of the workman (Ex.WW1/11) to the memo Ex.WW1/10 and issued notification Ex.WW1/7. It is pertinent to mention here that notification/order (Ex.WW1/7) was issued on 31st March, 2015, whereby it was made clear that the workman superannuated from service on 28/2/2015 and his name was struck off from the roll w.e.f.1/3/2015. To my mind, it was incumbent upon the Management to give proper and sufficient opportunity to the workman/claimant, before passing order, striking off his name from the roll w.e.f.01/03/2015. It was also incumbent upon the Management to issue orders/stipulation regarding the age of superannuation of the workman/claimant, much prior to actual date of his superannuation. Perusal of the record also

shows that the Management did not issue any order regarding the superannuation of the workman on the basis of service record prior to issuance of order/notification Ex.WW1/7. To my mind order/notification Ex.WW1/7 issued by the Management was without any cogent basis but was in utter haste, inasmuch as in the reply (Ex.WW1/4) submitted to the ALC, the Management in para 6 has specifically stated that the Electoral Roll of 2015 also shows his (workman's) age to be 55 years. For the sake of convenience, para 6 of the aforesaid reply of the Management is reproduced hereunder :-

> "6. The employee has taken the stand that he is illiterate and therefore, the date in his PAN card was entered incorrectly. Further, the employee only produced a notarized affidavit as proof of his date of birth which has no legal sanctity in particular vis-à-vis government records. **Rather, the Electoral Roll of 2015 also shows his age to be 55 years and that of his son 24 years.** The employee also did not produce any evidence to show that he had sought correction of his date of birth either in the PAN Card or the Electoral Roll which further suggests that in fact he has given the correct age to the government authorities and the wrong age to the University**."**

The above reply of the Management clearly shows that the Management was well aware that age of the workman/claimant as per Electoral Roll of 2015 was 55 years. Even in that eventuality, the workman/claimant was/is supposed to superannuate in 2020 and not in 2015 itself. All these circumstances leads this Tribunal to conclude that the Management acted in utter haste, arbitrary and illegal manner, in retiring the workman/claimant from service on 28/2/2015 (A/N) and striking off his name from the roll w.e.f.1/3/2015 vide communication dated 31/3/2015 (Ex.WW1/7). It is, therefore, held that the action of the Management in retiring the workman on 13/3/2015 is illegal and unjustified.

12- As a corollary to the above discussion, the question arises for consideration as to what relief the claimant/workman is entitled to. The claimant in his testimony has deposed that he is unemployed since the date of his termination i.e. 13/3/2015. The Management has not led any evidence to show that the workman is gainfully employed. Since the workman was not at fault when he was given forced retirement by the Management, this Tribunal is of the view that ends of justice will meet if the Management is directed to treat the workman in service till he attains the age of superannuation and to give all monetary/pecuniary benefits including salary, promotional benefits if any. However, the Management will be at liberty to hold Fact Finding Enquiry so as to ascertain the actual date of birth of the workman/claimant as also the age of his superannuation. These issues are accordingly answered in favour of the workman.

O R D E R

The reference is answered on the contest in favour of the workman. The order passed by the Management regarding striking off the name of workman from the roll, amounting to termination of the workman/claimant w.e.f. 1/3/2015 is held to be illegal. Management is directed to treat the workman in service w.e.f. 1/3/2015 and also to give him all monetary/pecuniary benefits including salary, promotional benefits if any. Award is passed accordingly. Let copy of this Award be sent for publication as required under Section 17 of the Act.

The reference is accordingly answered.

Dictated & corrected by me.

PRANITA MOHANTY, Presiding Officer

23rd September, 2019

नई दिल्ली, 30 अक्तूबर, 2019

का.आ. 1912.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार मेसर्स सचिव, संचार मंत्रालय, भारत सरकार, नई दिल्ली और अन्य एवं उनके कर्मचारी के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय-2, नई दिल्ली के पंचाट (संदर्भ संख्या 61/2011) को प्रकाशित करती है जो केन्द्रीय सरकार को 21.10.2019 को प्राप्त हुए थे।

[सं. एल-40011/13/2011-आईआर (डीयू)]

वी. के. ठाकुर, अनुभाग अधिकारी

New Delhi, the 30th October, 2019

S.O. 1912.—In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 61/2011) of the Central Government Industrial Tribunal-cum-Labour Court-2, New Delhi as shown in the Annexure, in the Industrial dispute between the employers in relation to The Secretary, Ministry of Communication, Govt. of India, New Delhi & Others, and their workmen which were received by the Central Government on 21.10.2019.

[No. L-40011/13/2011-IR (DU)]

V. K. THAKUR, Section Officer

ANNEXURE

CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL CUM LABOUR COURT No. 2 NEW DELHI

PRESENT : SMT. PRANITA MOHANTY, Presiding Officer,
CGIT-cum-Labour Court-II, New Delhi.

INDUSTRIAL DISPUTE CASE No. 61/2011

Date of Passing Award : 27th September, 2019

Shri Jai Pal Singh,
Groujp "D" Electrical
Head Post Office – Rohtak,
Through National Union of Postal Employees,
Postmen and Group "D" …Workman

Versus

1. The Secretary, Ministry of Communication,
Govt. of India, New Delhi.

2. The Chief Post Master General,
Haryana Circle, Ambala,

3. The Director of Postal Services,
Haryana Circle, Ambala.

4. The Senior Superintendent of Post Offices,
Karnal Division. …Management

Appearances :—

Shri Jai Pal Singh, Claimant/Workman	In person
Shri Atul Bhardwaj, A/R	For the Management

AWARD

The Government of India, Ministry of Labour vide letter No.L-40011/13/2011/IR(DU) dated 19.09.2011 has referred the present dispute between the workman/claimant Jai Pal Singh and Chief Post Master General Haryana, to this Tribunal under clause (d) of sub-section (1) and sub-section (2A) of Section 10 of the Industrial Disputes Act, 1947(in short the Act) for adjudication to the following effect :—

> ''Whether the action of the Chief Post Master General Haryana, Ambala in posting of Shri Jaipal Singh Group-D Electrical to Rohtak from Karnal on regularization is as per the Departmental instruction ? If yes, whether it is legal and justified ? If not, what relief the workman is entitled to ?''

2. Notices were issued to both the parties. The claimant/workman Jai Pal Singh filed his statement of claim, whereas the Management filed written statement to resist the claim of the workman. However, admitted facts of the case as emerged from the pleadings of the parties are as follows.

ADMITTED FACTS :—

The workman was engaged by the Management as part time Electrician in July, 1982 and subsequently he was appointed as unskilled labourer on temporary daily wage basis w.e.f.2/11/1983 in the pay-scale of Rs.196-230/-. He was granted temporary status of Group-D under casual labour scheme w.e.f.29-11-1989. The claimant/workman sought regularization of his services and approached Hon'ble Central Administrative Tribunal, Chandigarh vide OA No.683-HR of 1995 which was disposed of vide order dated 2/8/2001 with a direction to the Management to consider his case for regularization of his services in Group-D posts as he had been in service since the year 1983. Pursuant to the directions of Hon'ble CAT, the services of the workman who was only 6th class pass, were regularized in Group-D (non-test category) post of Safaiwala/Sweeper. The claimant/workman then filed another OA No.1228-HR of 2001 challenging his placement as Sweeper. During pendency of the said OA, the Management approved the name of the claimant for appointment to the post of NTC (Group-D) (Electrical) & was posted under the Senior Post Master, Rohtak vide order dated 25/2/2002 followed by order dated 11/3/2002 in the pay-scale of Rs.2550-3200/- and he had assumed charge to the said post. The services of the claimant were terminated on 11/6/2002. Thereafter he filed OA No.928/HR/2003 and the Hon'ble CAT set aside the order of termination vide order dated 13/2/2004. Since then he has been serving in Rohtak (Haryana) since 27/3/2002.

3- According to the claimant/workman, vide his letter dated 28/12/2007 he had sought information under RTI Act as regards vacancies available in Karnal circle. It is pleaded that the transfer of the workman to Rohtak is in sharp disobedience to the judgement delivered by Hon'ble Supreme Court in the case of Union of India and others Vs. Multan "Singh and others, II LLJ 1992 page 763 . Even otherwise the office of SSPO Karnal Division is known for its corrupt activities and Smt. Bhateri Devi widow of one deceased employee was asked to pay bribe of Rs.60,000/- for her appointment. SSPO Karnal Division, Karnal was caught red handed by taking a bribe of Rs.20,000/- and was convicted to three years imprisonment. He has prayed for issuing directions to the Management for posting him at his native district considering his family status and health conditions.

4- The Management resisted the claim of the workman and has taken a preliminary objection that the claimant/workman has not approached the Tribunal with clean hands. It has been stated that allegations of the workman regarding corrupt practices in SSPO Karnal Division are baseless since SSPO office had simply forwarded the case fo Bhateri Devi to C.O. for compassionate appointment and the decisions wee taken at C.O. level. Prayer has been made for dismissal of claim petition.

4- The workman/claimant filed rejoinder, reiterating his own case as set up in the statement of claim and denied the allegations of the Management.

5- Vide order dated 26/4/2013, my learned Predecessor observed that no other issue than those referred by the appropriate Government for adjudidication is made out and parties were called upon to lead their evidence.

6- The workman /claimant examined himself and tendered his affidavit Ex.WW1. He placed reliance on documents Ex.WW1/1 to Ex.WW1/A to Ex.WW1/P. On the other hand, Management examined Shri J.K. Gulati, Superintendent of Post Offices, Karnal Division who filed his affidavit Ex.MW1/A and placed reliance on documents Ex.MW1/1.

7- I have heard the claimant who appeared in person and Shri Atul Bhardwaj, A/R for the Management. I have also gone through the records carefully.

9- Short question arises for consideration is whether the posting of Shri Jaipal Singh, Group-D from Karnal to Rohtak is legal and justified. For this purpose, it will be worthwhile to refer to the oral as well as documentary evidence adduced on record. Claimant's affidavit Ex.WW1 is in consonance with the pleadings i.e. statement of claim filed by the claimant. While admitting that he was permanently appointed at Rohtak against a permanent post, he volunteered that there existed no vacancy at Karnal. He has been working as Electrical Group-D employee. He deposed that no post of Electrical Group-D existed at Karnal.

10- According to the testimony of MW1 Shri J.K.Gulati, since the post of Group "D" NTC was available at Rohtak, the workman/claimant was posted at Rohtak as NTC Group-D (Electrical) and he had assumed charge of the said post on 27/3/2002 and since then he had been working in Rohtak postal division continuously. He also testified that order of transfer of Shri Jai Pal Singh, NTC, Group-D Electrician, Rohtak has been issued vide office memo dated 5/6/2014 (Ex.MW1/1) and he has been posted as NTC, MTS, Karnal HO against vacant post of MTS at Karnal.

11- It is manifest from the pleadings of the parties and evidence as discussed hereinabove that the workman/claimant was appointed at Rohtak against a permanent post as there existed no post/vacancy of Electrical Group-D employee. at Karnal and he continued to work there since 27/3/2002 when he assumed charge of the said post. I may mention that Section 9-A of the Act provides a valuable right to the workers that the employer shall not be entitled to alter conditions of service to the disadvantage of the workers, without giving proper notice. However, Schedule IV of the Act has enlisted the issues/matters which require the Management to give notice to the workman before effecting change of service conditions to the detriment of the workers. The issue/matter regarding "transfe/posting" is not enlisted in Schedule IV of the Act . Thus, to my mind, transferring an employee from one place/branch to another place/branch is an incident of service and it does not amount to change of conditions of service. There is nothing on record to suggest that when the claimant was posted at Rohtak against permanent vacant post of NTC Group-D, any prejudice was caused to the claimant/workman with regard to his status or salary & other benefits. Transfer/Posting of the employees and assignment of duties is the function of the Management. There is nothing on record to suggest that the action of the Management in posting the claimant/workman at Rohtak was malafide or unjustified. Be that as it may, it is noteworthy that during pendency of the proceedings, Management has issued a memo/order dated 5/6/2014 (Ex.MW1/1) whereby the workman/claimant has since been transferred/posted from Rohtak to Karnal Division and in this way, the workman/claimant has got the relief which he claimed.

ORDER

The reference on the contest is decided, while holding that action of the Management in posting of the workman Jaipal Singh at Rohtak against permanent vacant post of NTS Group-D was neither illegal nor unjustified. Since the workman/claimant has since been transferred/posted to Karnal Division vide management's order dated 5/6/2014 (Ex.MW1/1), he is not entitled to any further relief from this Tribunal. Award is passed accordingly. Let copy of this Award be sent for publication as required under Section 17 of the Act.

Dictated & corrected by me.

PRANITA MOHANTY, Presiding Officer

27th September, 2019

नई दिल्ली, 30 अक्तूबर, 2019

का.आ. 1913.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार मेसर्स मैसर्स एएचआर एंड आर हॉस्पिटल, दिल्ली कैंट, नई दिल्ली और अन्य एवं उनके कर्मचारी के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय-2, नई दिल्ली के पंचाट (संदर्भ संख्या 122/2013) को प्रकाशित करती है जो केन्द्रीय सरकार को 21.10.2019 को प्राप्त हुए थे ।

[सं. एल-42025/07/2019-आईआर (डीयू)]

वी. के. ठाकुर, अनुभाग अधिकारी

New Delhi, the 30th October, 2019

S.O. 1913.—In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 122/2013) of the Central Government Industrial Tribunal-cum-Labour Court-2 New Delhi as shown in the Annexure, in the Industrial dispute between the employers in relation to The AHR&R Hospital, Delhi Cantt, New Delhi & Others, and their workmen which were received by the Central Government on 21.10.2019.

[No. L-42025/07/2019-IR (DU)]

V. K. THAKUR, Section Officer

ANNEXURE

CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL CUM LABOUR COURT No. 2 NEW DELHI

PRESENT : SMT. PRANITA MOHANTY, Presiding Officer, CGIT-cum-Labour Court-II, New Delhi.

INDUSTRIAL DISPUTE CASE No. 122/2013

Date of Passing Award : 26th September, 2019

Shri Mohan Bahadur Karki,
S/o. late Shri Dharam Mohan Karki,
A-704, Transit Camp, Gandhi Colony,
Govindpuri, Kalkaji,
New Delhi. …Workman

Versus

1. M/s. AHR&R Hospital,
   Delhi Cantt,
   Near Dhaula Kuan,
   New Delhi 110010.

2. M/s. PMC Officers' Mess,
   Near Dhaula Kuan,
   New Delhi 110010. Management

Appearances :-

Shri Sunil Kumar, A/R For the Workman

Shri Santosh Kumar, A/R For the Management

AWARD

This award shall decide a claim which has been filed directly by the Workman/claimant Shri Mohan Bahadur Karki, under Section 2(A) of the Industrial Disputes Act (hereinafter referred to as "the Act"), with the averments that he had been working as Guard w.e.f.17/1/1988 under the Management, though no appointment letter, leave book, identity card, overtime, increment, transport allowance, Bonus etc. was paid to him. He worked with dedication and honesty and gave no chance of any complaint. His last drawn wages were Rs.6700/- per month. The workman alongwith co-workers through Union approached the ALC/ Conciliation Officer for regularization of their services and a settlement was arrived at between the parties before the ALC on 10/5/2013. Instead of implementing the terms of the settlement, the Management started leveling false allegations against the claimant and when he protested, the Management terminated his services on 5/7/2013 without giving him any prior notice or notice pay or charge sheet etc., and thereby the Management violated the provisions of Section 25-F of the Act. Even wages for the period from 1/6/2013 to 4/7/2013 were not paid to the claimant. The workman got sent demand/legal notice through registered cover to the Management but to no response. The claimant through Union approached ALC but to no avail. Despite best efforts, the workman/claimant could not get any job or work and he is unemployed since the date of his illegal termination. Prayer has been made for reinstatement into service with full back wages and continuity of service.

3- The statement of claim has been resisted by the Management who filed its written statement and took preliminary objections that Army Officers' Mess is neither an industry under Section 2(j) of the Act, nor is a Club, because the said Mess is performing a function supportive to Army which performs a sovereign function; purpose of R&R Army Officers Mess is to provide primarily dining and single Officer accommodation for serving Officers of the defence services and/or their families posted to R&R Hospital till they get regular official accommodation. All army officers posted to R&R are compulsorily members of the Mess for the duration of their tenure and contribute monthly subscription for meeting part expenditure of the Mess; that the Mess is a non profit organization run by contributions from its Members and is not open for use to any other than the Members. The skeleton staff required to man the Mess e.g.cook, mali, sweeper and waiters etc. are appointed as far as practically possible from ex-servicemen and if not from civilians but the staff are not government servants. They are employed on need basis by the Mess Committee. While denying the allegations of the claimant./workman, it has been stated that the staff have been provided with remuneration in the form of daily/monthly wages, free accommodation for self and family, water & electricity usage, leave and off days, free sets of uniform, tea, food and medical assistance in case of an emergency. It is stated that after meeting dated 10/5/2013, increased wages were paid to the workmen. Inescapable necessity was felt by the Mess Committee to

downsize the numbers of mess staffs and so depending upon the need & work profile, the best suited for the work being given priority for retention and accordingly the Mess Committee terminated the services of the workman after offering him one month's salary but the workman refused to accept the same. Prayer has been made for dismissal of claim petition with costs.

4- The workman/claimant filed rejoinder, reiterating his own case as set up in the statement of claim and denied the allegations of the Management.

5- Vide order dated 31/7/2014 my learned Predecessor framed following issues and parties were called upon to lead their respective evidences :—

1) Whether act of the management in terminating the services of workman on 5/7/2013 was against the provisions of Industrial Disputes Act, 1947 ? If so, its effect ?

2) Whether workman is entitled for reinstatement ? If so, its effect ?

3) Whether workman is entitled for arrears of pay, bonus etc.? If so its effect ?

4) Whether industrial dispute is maintainable ? If so, its effect ?

6- The workman /claimant examined himself as WW1 and led evidence by 2way of affidavit Ex.WW1/A. He placed reliance on documents Ex.WW1/1 and marked as Mark-A and Mark-B. On the other hand, Management examined Shri Monal Kansra, former Mess Secretary who filed his affidavit Ex.MW1/A and placed reliance on documents Ex.MW1/1 to Ex.MW1/5.

7- I have heard arguments from A/Rs of the parties and have also gone through the records carefully. My findings on the above issues are as follows.

ISSUE No. 4 :—

8- Firstly I take up this issue regarding maintainability of the claim petition. Learned A/R for the Management streneously argued that this Tribunal has no jurisdiction to entertain the claim petition since the Management PMC Officers' Mess wherein the claimant was engaged on need base, is not an "Industry" within the meaning of Section 2(j) of the Act, because the said Mess is performing a function supportive to Army which performs a sovereign function and main object of R&R Army Officers Mess is to provide dining and single Officer accommodation for serving Officers of the defence services and/or their families posted to R&R Hospital till they get regular official accommodation. As such, the reference is not legally maintainable.

9- Per-contra, learned A/R for the workman submitted that this Tribunal has all powers to adjudicate and decide the claim petition under the provisions of the Act because the Management PMC Officers' Mess being a subsidiary of AHR&R Hospital, Delhi Cantt. Is an "industry" as defined under Section 2(j) of the Act.

10- I may mention that the workman/claimant was admittedly engaged & employed by the Management – may be on temporary/need basis, as a Guard and this fact is also borne out from the testimony of MW1 Shri Monal Kansra who explained in his cross examination that he knew the workman Mohan Bahadur Karki since he was working from 2007 to 2010 in R&R Officers Mess Delhi Cantt, during his (witness) tenure of posting. Testimony of the workman/claimant that he worked under the Management from 17/1/1988 till 4/7/2013 has gone unchallenged and unassailed. As such, the claimant is a workman, within the meaning of Section 2(s) of the Act. It is noteable that the definition of "workman" does not make any distinction between full time and part time employee or a person appointed on contract/temporary basis. There is nothing in the plain language of Section 2(s) from which it can be inferred that only person employed on regular basis or a person employed for doing whole time job is a workman and the one employed on temporary, part time or contract basis on fixed wages or as a casual employee or for doing duty for fixed hours in not a workman. Reference may be made to the decision of Hon'ble Supreme Court in the case of Davinder Singh Vs. Municipal Council Sanaur, AIR 2011 (SC 2532).

11- Just because the Management PMC Officers Mess is catering dining services to the Army Officers or that it is non profitable organization, it will be improper to say that the same is performing sovereign functions and is not an "industry". The Management has filed on record documents viz. Ex.R-1 & R-2 are the Mess Rules; Ex.R-3 is copy of the letter dated 31/3/1999 issued by Deputy Secretary to the Govt. Of India regarding recognition of Military Hospitals Civil Workers Unions; Ex.R-4 is the copy of minutes of General Body Mess meeting held on 24/8/2012 and Ex.R-5 is the copy of the reply dated 20/7/2013 which the Management had sent to the ALC. These documents are of no help to the Management, as a perusal thereof does not in any way show that PMC Officers Mess is performing "sovereign function". I may mention that the Hon'ble Apex Court in the case of Bangalore Water Supply & Sewage Board Vs. A. Rajappa AIR 1978 SC 548 dealt at length with the ambit and scope of expression "industry" as defined under Section 2(j) of the Act and held as under :—

"(a) Where a complex of activities, some of which qualify for exemption, other not involves employees on the total undertaking some of whom are not "workman" as in the University of Delhi case (supra) or some departments are not productive of goods and services, if isolated, even then the predominant nature of the services and integrated nature of the departments as explained in the Corporation of Nagpur (supra) will be the true test. The whole undertaking will be "industry" although those who are not "workmen" by definition may not benefit by the statue.

(b) Notwithstanding the previous clauses, sovereign functions strictly understood (alone) qualify for exemption, not the welfare activities or economic adventures undertaken by the Government or Statutory bodies.

(c) Even in departments discharging sovereign functions, if there are units which are industries and they are substantially severable, they can be considered to come within Section 2(j).

(d) Constitutional and competently enacted legislative provisions may well remove from the scope of the Act, categories which otherwise may be covered thereby

(e) We overrule Safdarjung (supra), Solicitors' case(supra),Gymkhana (supra, Delhi University (supra) Dhanrajgiri Hospital (supra) and other ruling whose ratio run counter to the principles enunciated above and Hospital Mazdoor Sabha (supra) is hereby rehabilitated.

12- In view of the law enunciated by the Apex Court, as discussed above, I am of the considered view that PMC Officers Mess being substantially severable unit from the Indian Army, is an "Industry" under Section 2(j) of the Act. As such, it is held that the Management is an "Industry" qua the claimant/workman who was simply working as Guard and that the present claim petition is maintainable. This issue is answered accordingly in favour of the workman.

Issue No. 1 to 3 :—

13- All these issues being co-related are taken up together and same can be disposed of conveniently by common discussion.

14- From the pleadings of the parties and evidence adduced on record, it is manifest that the claimant/workman worked under the Management as Guard from 17/1/1988 till 4/7/2013. His last drawn wages were Rs.6700/- per month. Although the Management laid much stress on the point that the services of the claimant were contractual and need basis, however no document has been filed on record to prove the same or to show that the services of the claimant came to an end after expiry of the period mentioned in the contract between the parties. On the contrary, testimony of the claimant that he worked continuously from 17/1/1988 to 4/7/2013 has gone unchallenged and unassailed. The workman/claimant has filed on record copy of the claim (Mark-A) which he had filed before Labour Commissioner, seeking regularization of his services by the Management and copy of the settlement dated 10/5/2013 (Mark-B) arrived at between the parties before the Conciliation Officer, which inter alia provided as under :—

"6. The Management shall ensure that no workman are paid wages at rate less than the minimum rate of wages.

7. That the Management is paying some Diwali Bonus but henceforth shall ensure payment of at least 8.33% of annual basis to all the workmen.

8. That the Management shall provide free OPD Medical treatment to the workmen concerned and their dependents…."

Testimony of the claimant/workman that the Management terminated his services w.e.f.5/7/2013 without giving him any notice or notice pay has gone unchallenged. Testimony of the claimant/workman that he was not paid wages for the period from 1/6/2013 to 4/7/2013 has also gone unassailed. Though the Management has pleaded that the Management had offered one month's salary to the claimant but he had refused to receive the same, yet no documentary evidence has been filed on record to substantiate the same. A suggestion to this effect was given to the workman/claimant but he had specifically denied the same. The Management has not filed any document in the form of receipt or voucher etc. to show that in fact wages for the period from 1/6/2013 to 4/7/2013 were paid to the workman. Thus, there is nothing on record to show that the Management had either paid earned wages for the period from 1/6/2013 to 4/7/0213 to the workman or it had issued any notice to the claimant before ordering his termination, or has paid one month's salary in lieu of such notice as required under Section 25-F of the Act or that the Management had given notice to the appropriate Government about their intention of disengaging/discharging the workman from service. I may mention that provisions of Section 25-F of the Act which provides for conditions precedent to retrenchment of workmen, are absolute and inexorable and it reads as under :—

"25-F : Conditions precedent to retrenchment of workmen –

No workman employed in any industry who has been in continuous service for not less than one year under an employer shall be retrenched by that employer until –

(a) The workman has been given one month's notice in writing indicating the reasons for retrenchment and the period of notice has expired, or the workman has been paid in lieu of such notice, wages for the period of the notice;

(b) The workman has been paid, at the time of retrenchment, compensation which shall be equivalent to fifteen days' average pay for every completed years of continuous service or any part thereof in excess of six months; and

(c) Notice in the prescribed manner is served on the appropriate Government or such authority as may be specified by the appropriate Government by notification in the Official Gazette."

The above provision makes it clear that the employer is required to give notice to the appropriate Government apart-from giving one month's notice in writing or one month's wages in lieu of the notice and payment of retrenchment compensation to the concerned workman.

15- There is long line of decisions of Hon'ble Apex Court as well as of various High Courts that provisions of Section 25-F of the Act are mandatory in nature and termination of the workman from services in derogation of the provisions of Section 25-F of the Act will render whole action of the Management to be illegal and wrong under the law. Since there is no evidence on record that any valid notice was issued by the Management to the workman at the time of termination or in lieu of such notice, any compensation was paid to him, as such action of the Management in terminating the services of the workman w.e.f. 5/7/2013 is held to be illegal and void.

16- Now the crucial question for consideration is whether the claimant is entitled to any incidental relief of payment of back wages and/or reinstatement of service. It stands proved on record that claimant was working as Guard under the Management since 1988 till his termination w.ef.5/7/2013. There is pleading in the claim petition as well as evidence to the effect that the workman is unemployed since the day of his termination and has got no source of his livelihood.. The Management has not adduced any evidence to show that the claimant is gainfully employed somewhere else or that he is in a position to make his both ends meet by doing any work. Even if it is assumed that the claimant is doing some intermittent or ad-hoc work to make his both ends meet, that would not itself amount to gainful employment.

17- The Hon'ble Apex Court in case *"Deepali Gundu Surwase v. Kranti Junior Adhyapak Mahavidyalaya"* reported as (2013) 10 SCC 324 has held as under :

"The propositions which can be culled out from the aforementioned judgments are :

i) In cases of wrongful termination of service, reinstatement with continuity of service and back wages is the normal rule.

ii) Ordinarily, an employee or workman whose services are terminated and who is desirous of getting back wages is required to either plead or at least make a statement before the adjudicating authority or the Court of first instance that he/she was not gainfully employed or was employed on lesser wages. If the employer wants to avoid payment of full back wages, then I has to plead and also lead cogent evidence to prove that the employee/workman wads gainfully employed and was getting wages equal to the wages he/she wads drawing prior to the termination of service. This is so because it is settled law that the burden of proof of the existence of a particular fact lies on the person who makes a positive averments about its existence. It is always easier to prove a positive fact than to prove a negative fact. Therefore, once the employee shows that he was employed, the onus lies on the employer to specifically plead and prove that the employee was gainfully employed and was getting the same or substantially similar emoluments."

18- The Hon'ble Apex Court also held that different expressions are used for describing the consequence of termination of a workman's service/employment/engagement by way of retrenchment without complying with the mandate of Section 25F of the Act. Sometimes it has been termed as ab initio void, sometimes as illegal per se, sometime as nullity and sometimes as non est. Leaving aside the legal semantics, we have no hesitation to hold that termination of service of an employee by way of retrenchment without complying with the requirement of giving one month's notice or pay in lieu thereof and compensation in terms of Section 25F (a) and (b) has the effect of rendering the action of the employer and nullity and the employee is entitled to continue in employment as if his service was not terminated. (Anoop Sharma Vs. Executive Engineer, Public Health Division No.1 Panipat (2010) 5 SCC 497).

19- However, Hon'ble Apex Court in the case General Manager, Haryana Roadways Vs. Rudan Singh, reported as 2005 SCC (L&S) 716 observed as under :—

"8. There is no rule of thumb that in every case where the Industrial Tribunal gives a finding that the termination of service was in violation of Section 25-F of the Act, entire back wages should be awarded. A host of factors like the manner and method of selection and appointment i.e. whether after proper advertisement of the vacancy

or inviting applications from the employment exchange, nature of appointment namely, whether ad hoc, short term, daily wage, temporary or permanent in character, any special qualification required for the job and the like should be weighed and balanced in taking a decision regarding award of back wages. One of the important factors which has to be taken into consideration is the length of service, which the workman had rendered with the employer. If the workman has rendered a considerable period of service and his services are wrongfully terminated, he may be awarded full or partial back wages keeping in view the fact that at this age and the qualification possessed by him he may not be in a position to get another employment. However, where the total length of service rendered by a workman is very small, the award of back wages for the complete period i.e. from the date of termination till the date of the award, which our experience shows is often quite large, would be wholly inappropriate. A regular service of permanent character cannot be compared to short or intermittent daily wage employment though it may be for 240 days in a calendar year."

There is nothing on record to suggest that the claimant/workman had secured the job either through employment exchange or through proper recruitment mode. There is also nothing on record to show that job of the claimant was on permanent basis. His last drawn wages were only to the tune of Rs.7222/- per month. Needless to mention that there are number of factors which are required to be considered by the Tribunal while considering the question of reinstatement with back wages. It has been held in the case of Hari Nandan Prasad Vs. Food Corporation of India (2014) 7 Supreme Court cases 190 as under :-

"Relief by way of reinstatement with back wages is not automatic and may be wholly inappropriate in a given fact situation even though the termination of an employee is in contravention of the prescribed procedure. Compensation instead of reinstatement has been held to meet the ends of justice. An order of retrenchment passed in violation of Section 25-F although may be set aside but an award of reinstatement should not, however, automatically passed. The award of reinstatement with full back wages in a case where the workman has completed 240 days of work in a year preceding the date of termination, particularly daily wages has not been found to be proper by the Supreme Court and instead compensation has been awarded. The Supreme Court has distinguished between a daily wager who does not hold a post and a permanent employee. The reasons for denying the relief of reinstatement in such cases are obvious. It is trite law that when the termination is found to be illegal, because of non payment of retrenchment compensation and notice pay as mandatorily required under Section 25-F of the Industrial Disputes Act, even after reinstatement, it is always open to the management to terminate the services of that employee by paying him the retrenchment compensation.

20- Having regard to the judicial trends as also the facts & circumstances of the present case, this Tribunal considers that ends of justice will meet if compensation amount of Rs.Two lakhs (Rupees Two Lakhs) besides wages for the period from 1/6/2013 to 4/7/2013 @ 7222/-per month, is awarded to the workman/claimant. Therefore, aforesaid compensation amount is hereby awarded in favour of the claimant/workman, which shall be paid by the Management within three months from the date of publication of the Award, failing which the claimant will be entitled to recover the same alongwith interest @ 6% p.a. from the date of publication of Award till realization. These issues are decided accordingly.

ORDER

The reference is answered on the contest in favour of the workman. Lumpsum compensation amount of Rs. 2,00,000/- (Rupees Two Lakhs) besides amount towards unpaid wages @ 6700/-per month for the period from 1/6/2013 to 4/7/2013, is hereby awarded in favour of the claimant/workman which shall be paid by the Management within three months from the date of publication of the Award, failing which the claimant will be entitled to recover the same alongwith interest @ 6% p.a. from the date of publication of Award till realization. Award is passed accordingly. Let copy of this Award be sent for publication as required under Section 17 of the Act.

Dictated & corrected by me.

PRANITA MOHANTY, Presiding Officer

26th September, 2019

नई दिल्ली, 30 अक्तूबर, 2019

का.आ. 1914.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार मैसर्स ए.एच.आर. एंड. आर हॉस्पिटल, दिल्ली कैंट, नई दिल्ली और अन्य एवं उनके कर्मचारी के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय-2, नई दिल्ली के पंचाट (संदर्भ संख्या 120/2013) को प्रकाशित करती है जो केन्द्रीय सरकार को 21.10.2019 को प्राप्त हुए थे।

[सं. एल-42025/07/2019-आईआर (डीयू)]

वी. के. ठाकुर, अनुभाग अधिकारी

New Delhi, the 30th October, 2019

S.O. 1914.—In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 120/2013) of the Central Government Industrial Tribunal-cum-Labour Court-2 New Delhi as shown in the Annexure, in the Industrial dispute between the employers in relation to The AHR&R Hospital, Delhi Cantt, New Delhi & Others, and their workmen which were received by the Central Government on 21.10.2019.

[No. L-42025/07/2019-IR (DU)]

V. K. THAKUR, Section Officer

ANNEXURE

CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL CUM LABOUR COURT No. 2: NEW DELHI

PRESENT : SMT. PRANITA MOHANTY, Presiding Officer, CGIT-cum-Labour Court-II, New Delhi.

INDUSTRIAL DISPUTE CASE No. 120/2013

Date of Passing Award : 26th September, 2019

Shri Mohan Ram,
S/o. Shri Narayan Ram ,
A-704, Transit Camp, Rajeev Gandhi Colony,
Govindpuri, Kalkaji,
New Delhi. …Workman

Versus

1. M/s. AHR&R Hospital,
   Delhi Cantt,
   Near Dhaula Kuan,
   New Delhi 110010.

2. M/s. PMC Officers' Mess,
   Near Dhaula Kuan,
   New Delhi 110010. …Management

Appearances :—

Shri Sunil Kumar, A/R For the Workman

Shri Santosh Kumar, A/R For the Management

AWARD

This award shall decide a claim which has been filed directly by the Workman/claimant Shri Mohan Ram, under Section 2(A) of the Industrial Disputes Act (hereinafter referred to as "the Act"), with the averments that he had been working as Cook w.e.f. 14/10/1994 under the Management, though no appointment letter, leave book, identity card, overtime, increment, transport allowance, Bonus etc. was paid to him. He worked with dedication and honesty and gave no chance

of any complaint. His last drawn wages were Rs.9300/- per month. The workman alongwith co-workers through Union approached the ALC/ Conciliation Officer for regularization of their services and a settlement was arrived at between the parties before the ALC on 10/5/2013. Instead of implementing the terms of the settlement, the Management started leveling false allegations against the claimant and when he protested, the Management terminated his services on 5/7/2013 without giving him any prior notice or notice pay or charge sheet etc., and thereby the Management violated the provisions of Section 25-F of the Act. Even wages for the period from 1/6/2013 to 4/7/2013 were not paid to the claimant. The workman got sent demand/legal notice through registered cover to the Management but to no response. The claimant through Union approached ALC but to no avail. Despite best efforts, the workman/claimant could not get any job or work and he is unemployed since the date of his illegal termination. Prayer has been made for reinstatement into service with full back wages and continuity of service.

3- The statement of claim has been resisted by the Management who filed its written statement and took preliminary objections that Army Officers' Mess is neither an industry under Section 2(j) of the Act, nor is a Club, because the said Mess is performing a function supportive to Army which performs a sovereign function; purpose of R&R Army Officers Mess is to provide primarily dining and single Officer accommodation for serving Officers of the defence services and/or their families posted to R&R Hospital till they get regular official accommodation. All army officers posted to R&R are compulsorily members of the Mess for the duration of their tenure and contribute monthly subscription for meeting part expenditure of the Mess; that the Mess is a non profit organization run by contributions from its Members and is not open for use to any other than the Members. The skeleton staff required to man the Mess e.g.cook, mali, sweeper and Waiters etc. are appointed as far as practically possible from ex-servicemen and if not from civilians but the staff are not government servants. They are employed on need basis by the Mess Committee. While denying the allegations of the claimant/workman, it has been stated that the staff have been provided with remuneration in the form of daily/monthly wages, free accommodation for self and family, water & electricity usage, leave and off days, free sets of uniform, tea, food and medical assistance in case of an emergency. It is stated that after meeting dated 10/5/2013, increased wages were paid to the workmen. Inescapable necessity was felt by the Mess Committee to downsize the numbers of mess staffs and so depending upon the need & work profile, the best suited for the work being given priority for retention and accordingly the Mess Committee terminated the services of the workman after offering him one month's salary but the workman refused to accept the same. Prayer has been made for dismissal of claim petition with costs.

4- The workman/claimant filed rejoinder, reiterating his own case as set up in the statement of claim and denied the allegations of the Management.

5- Vide order dated 31/7/2014 my learned Predecessor framed following issues and parties were called upon to lead their respective evidences :-

1) Whether act of the management in terminating the services of workman on 5/7/2013 was against the provisions of Industrial Disputes Act, 1947 ? If so, its effect ?

2) Whether workman is entitled for reinstatement ? If so, its effect ?

3) Whether workman is entitled for arrears of pay, bonus etc.? If so its effect ?

4) Whether industrial dispute is maintainable ? If so, its effect ?

6- The workman /claimant examined himself as WW1 and led evidence by way of affidavit Ex.WW1/A. He placed reliance on documents Ex.WW1/1 and marked as Mark-A and Mark-B. On the other hand, Management examined Shri Monal Kansra, former Mess Secretary who filed his affidavit Ex.MW1/A and placed reliance on documents Ex.MW1/1 to Ex.MW1/5 (colly.).

7- I have heard arguments from A/Rs of the parties and have also gone through the records carefully. My findings on the above issues are as follows.

ISSUE No.4 :-

8- Firstly I take up this issue regarding maintainability of the claim petition. Learned A/R for the Management strenuously argued that this Tribunal has no jurisdiction to entertain the claim petition since the Management PMC Officers' Mess wherein the claimant was engaged on need base, is not an "Industry" within the meaning of Section 2(j) of the Act, because the said Mess is performing a function supportive to Army which performs a sovereign function and main object of R&R Army Officers Mess is to provide dining and single Officer accommodation for serving Officers of the defence services and/or their families posted to R&R Hospital till they get regular official accommodation. As such, the reference is not legally maintainable.

9- Per-contra, learned A/R for the workman submitted that this Tribunal has all powers to adjudicate and decide the claim petition under the provisions of the Act because the Management PMC Officers' Mess being a subsidiary of AHR&R Hospital, Delhi Cantt. is an "industry" as defined under Section 2(j) of the Act.

10- I may mention that the workman/claimant was admittedly engaged & employed by the Management – may be on temporary/need basis, as a Cook and this fact is also borne out from the testimony of MW1 Shri Monal Kansra who explained in his cross examination that he knew the workman Mohan Ram since he was working from 2007 to 2010 in R&R Officers Mess Delhi Cantt, during his (witness) tenure of posting. Testimony of the workman/claimant that he worked under the Management from 14/10/1994 till 4/7/2013 has gone unchallenged and unassailed. As such, the claimant is a workman, within the meaning of Section 2(s) of the Act. It is notable that the definition of "workman" does not make any distinction between full time and part time employee or a person appointed on contract/temporary basis. There is nothing in the plain language of Section 2(s) from which it can be inferred that only person employed on regular basis or a person employed for doing whole time job is a workman and the one employed on temporary, part time or contract basis on fixed wages or as a casual employee or for doing duty for fixed hours in not a workman. Reference may be made to the decision of Hon'ble Supreme Court in the case of Davinder Singh Vs. Municipal Council Sanaur, AIR 2011 (SC 2532).

11- Just because the Management PMC Officers Mess is catering dining services to the Army Officers or that it is non profitable organization, it will be improper to say that the same is performing sovereign functions and is not an "industry". The Management has filed on record documents viz. Ex.R-1 & R-2 are the Mess Rules; Ex.R-3 is copy of the letter dated 31/3/1999 issued by Deputy Secretary to the Govt. Of India regarding recognition of Military Hospitals Civil Workers Unions; Ex.R-4 is the copy of minutes of General Body Mess meeting held on 24/8/2012 and Ex.R-5 is the copy of the reply dated 20/7/2013 which the Management had sent to the ALC. These documents are of no help to the Management, as a bare perusal thereof does not in any way show that PMC Officers Mess is performing "sovereign function". I may mention that the Hon'ble Apex Court in the case of Bangalore Water Supply & Sewage Board Vs. A. Rajappa AIR 1978 SC 548 dealt at length with the ambit and scope of expression "industry" as defined under Section 2(j) of the Act and held as under:-

"(a) Where a complex of activities, some of which qualify for exemption, other not involves employees on the total undertaking some of whom are not "workman" as in the University of Delhi case (supra) or some departments are not productive of goods and services, if isolated, even then the predominant nature of the services and integrated nature of the departments as explained in the Corporation of Nagpur (supra) will be the true test. The whole undertaking will be "industry" although those who are not "workmen" by definition may not benefit by the statue.

(b) Notwithstanding the previous clauses, sovereign functions strictly understood (alone) qualify for exemption, not the welfare activities or economic adventures undertaken by the Government or Statutory bodies.

(c) Even in departments discharging sovereign functions, if there are units which are industries and they are substantially severable, they can be considered to come within Section 2(j).

(d) Constitutional and competently enacted legislative provisions may well remove from the scope of the Act, categories which otherwise may be covered thereby

(e) We overrule Safdarjung (supra), Solicitors' case(supra),Gymkhana (supra), Delhi University (supra) Dhanrajgiri Hospital (supra) and other ruling whose ratio run counter to the principles enunciated above and Hospital Mazdoor Sabha (supra) is hereby rehabilitated.

12- In view of the law enunciated by the Apex Court, as discussed above, I am of the considered view that PMC Officers Mess being substantially severable unit from the Indian Army, is an "Industry" under Section 2(j) of the Act. As such, it is held that the Management is an "Industry" qua the claimant/workman who was simply working as Cook and that the present claim petition is maintainable. This issue is answered accordingly in favour of the workman.

Issue No.1 to 3 :-

13- All these issues being co-related are taken up together and same can be disposed of conveniently by common discussion.

14- From the pleadings of the parties and evidence adduced on record, it is manifest that the claimant/workman worked under the Management as Cook from 14/10/1994 till 4/7/2013. His last drawn wages were Rs.9300/- per month. Although the Management laid much stress on the point that the services of the claimant were contractual and need basis, however no document has been filed on record to prove the same or to show that the services of the claimant came to an end after expiry of the period mentioned in the contract between the parties. On the contrary, testimony of the claimant that he worked continuously from 14/10/1994 to 4/7/2013 has gone unchallenged and unassailed. The workman/claimant has filed on record copy of the claim (Mark-A) which he had filed before Labour Commissioner, seeking regularization of his services by the Management and copy of the settlement dated 10/5/2013 (Mark-B) arrived at between the parties before the Conciliation Officer, which inter alia provided as under :-

"6. The Management shall ensure that no workman are paid wages at rate less than the minimum rate of wages.

7. That the Management is paying some Diwali Bonus but henceforth shall ensure payment of at least 8.33% of annual basis to all the workmen.

8. That the Management shall provide free OPD Medical treatment to the workmen concerned and their dependents…."

Testimony of the claimant/workman that the Management terminated his services w.e.f. 05/7/2013 without giving him any notice or notice pay has gone unchallenged. Testimony of the claimant/workman that he was not paid wages for the period from 1/6/2013 to 4/7/2013 has also gone unassailed. Though the Management has pleaded that the Management had offered one month's salary to the claimant & he had refused to receive the same, yet no documentary evidence in the form of written letter/offer has been filed on record to substantiate the same. A suggestion to this effect was given to the workman/claimant but he had specifically denied the same. The Management has not filed any document in the form of receipt or voucher etc. to show that in fact wages for the period from 1/6/2013 to 4/7/2013 were paid to the workman. Thus, there is nothing on record to show that the Management had either paid earned wages for the period from 1/6/2013 to 4/7/0213 to the workman or it had issued any notice to the claimant before ordering his termination, or has paid one month's salary in lieu of such notice as required under Section 25-F of the Act or that the Management had given notice to the appropriate Government about their intention of disengaging/discharging the workman from service. I may mention that provisions of Section 25-F of the Act which provides for conditions precedent to retrenchment of workmen, are absolute and inexorable and it reads as under :-

"25-F : Conditions precedent to retrenchment of workmen –

No workman employed in any industry who has been in continuous service for not less than one year under an employer shall be retrenched by that employer until –

(a) The workman has been given one month's notice in writing indicating the reasons for retrenchment and the period of notice has expired, or the workman has been paid in lieu of such notice, wages for the period of the notice;

(b) The workman has been paid, at the time of retrenchment, compensation which shall be equivalent to fifteen days' average pay for every completed years of continuous service or any part thereof in excess of six months; and

(c) Notice in the prescribed manner is served on the appropriate Government or such authority as may be specified by the appropriate Government by notification in the Official Gazette."

The above provision makes it clear that **the employer is required to give notice to the appropriate Government** apart-from giving one month's notice in writing or one month's wages in lieu of the notice and payment of retrenchment compensation to the concerned workman.

15- There is long line of decisions of Hon'ble Apex Court as well as of various High Courts that provisions of Section 25-F of the Act are mandatory in nature and termination of the workman from services in derogation of the provisions of Section 25-F of the Act will render whole action of the Management Bank to be illegal and wrong under the law. Since there is no evidence on record that any valid notice was issued by the Management to the workman at the time of termination or in lieu of such notice, any compensation was paid to him, as such action of the Management in terminating the services of the workman w.e.f. 5/7/2013 is held to be illegal and void.

16- Now the crucial question for consideration is whether the claimant is entitled to any incidental relief of payment of back wages and/or reinstatement of service. It stands proved on record that claimant was working as Cook under the Management since 1996 till his termination w.ef.5/7/2013. There is pleading in the claim petition as well as evidence to the effect that the workman is unemployed since the day of his termination and has got no source of his livelihood.. The Management has not adduced any evidence to show that the claimant is gainfully employed somewhere else or that he is in a position to make his both ends meet by doing any work. Even if it is assumed that the claimant is doing some intermittent or ad-hoc work to make his both ends meet, that would not itself amount to gainful employment.

17- The Hon'ble Apex Court in case **"Deepali Gundu Surwase v. Kranti Junior Adhyapak Mahavidyalaya"** reported as (2013) 10 SCC 324 has held as under :

"The propositions which can be culled out from the aforementioned judgments are :

i) In cases of wrongful termination of service, reinstatement with continuity of service and back wages is the normal rule.

ii) Ordinarily, an employee or workman whose services are terminated and who is desirous of getting back wages is required to either plead or at least make a statement before the adjudicating authority or the Court of first instance that he/she was not gainfully employed or was employed on lesser wages. If

> the employer wants to avoid payment of full back wages, then I has to plead and also lead cogent evidence to prove that the employee/workman wads gainfully employed and was getting wages equal to the wages he/she wads drawing prior to the termination of service. This is so because it is settled law that the burden of proof of the existence of a particular fact lies on the person who makes a positive averments about its existence. It is always easier to prove a positive fact than to prove a negative fact. Therefore, once the employee shows that he was employed, the onus lies on the employer to specifically plead and prove that the employee was gainfully employed and was getting the same or substantially similar emoluments."

18- The Hon'ble Apex Court also held that different expressions are used for describing the consequence of termination of a workman's service/employment/engagement by way of retrenchment without complying with the mandate of Section 25F of the Act. Sometimes it has been termed as ab initio void, sometimes as illegal per se, sometime as nullity and sometimes as non est. Leaving aside the legal semantics, we have no hesitation to hold that termination of service of an employee by way of retrenchment without complying with the requirement of giving one month's notice or pay in lieu thereof and compensation in terms of Section 25F (a) and (b) has the effect of rendering the action of the employer and nullity and the employee is entitled to continue in employment as if his service was not terminated. *(Anoop Sharma Vs. Executive Engineer, Public Health Division No.1 Panipat (2010) 5 SCC 497).*

19- However, Hon'ble Apex Court in the case General Manager, Haryana Roadways Vs. Rudan Singh, reported as 2005 SCC (L&S) 716 observed as under :-

> "8. There is no rule of thumb that in every case where the Industrial Tribunal gives a finding that the termination of service was in violation of Section 25-F of the Act, entire back wages should be awarded. A host of factors like the manner and method of selection and appointment i.e. whether after proper advertisement of the vacancy or inviting applications from the employment exchange, nature of appointment namely, whether ad hoc, short term, daily wage, temporary or permanent in character, any special qualification required for the job and the like should be weighed and balanced in taking a decision regarding award of back wages. One of the important factors which has to be taken into consideration is the length of service, which the workman had rendered with the employer. If the workman has rendered a considerable period of service and his services are wrongfully terminated, he may be awarded full or partial back wages keeping in view the fact that at this age and the qualification possessed by him he may not be in a position to get another employment. However, where the total length of service rendered by a workman is very small, the award of back wages for the complete period i.e. from the date of termination till the date of the award, which our experience shows is often quite large, would be wholly inappropriate. A regular service of permanent character cannot be compared to short or intermittent daily wage employment though it may be for 240 days in a calendar year."

There is nothing on record to suggest that the claimant/workman had secured the job either through employment exchange or through proper recruitment mode. There is also nothing on record to show that job of the claimant was on permanent basis. His last drawn wages were only to the tune of Rs.9300/- per month. Needless to mention that there are number of factors which are required to be considered by the Tribunal while considering the question of reinstatement with back wages. It has been held in the case of Hari Nandan Prasad Vs. Food Corporation of India (2014) 7 Supreme Court cases 190 as under :-

> "Relief by way of reinstatement with back wages is not automatic and may be wholly inappropriate in a given fact situation even though the termination of an employee is in contravention of the prescribed procedure. Compensation instead of reinstatement has been held to meet the ends of justice. An order of retrenchment passed in violation of Section 25-F although may be set aside but an award of reinstatement should not, however, automatically passed. The award of reinstatement with full back wages in a case where the workman has completed 240 days of work in a year preceding the date of termination, particularly daily wages has not been found to be proper by the Supreme Court and instead compensation has been awarded. The Supreme Court has distinguished between a daily wager who does not hold a post and a permanent employee. The reasons for denying the relief of reinstatement in such cases are obvious. It is trite law that when the termination is found to be illegal, because of non payment of retrenchment compensation and notice pay as mandatorily required under Section 25-F of the Industrial Disputes Act, even after reinstatement, it is always open to the management to terminate the services of that employee by paying him the retrenchment compensation.

20- Having regard to the judicial trends as also the facts & circumstances of the present case, this Tribunal considers that ends of justice will meet if compensation amount of Rs.Two lakhs (Rupees Two Lakhs) besides wages for the period from 1/6/2013 to 4/7/2013 @ 9300/-per month, is awarded to the workman/claimant. Therefore, aforesaid compensation amount is hereby awarded in favour of the claimant/workman, which shall be paid by the Management within three months from the date of publication of the Award, failing which the claimant will be entitled to recover the same alongwith interest @ 6% p.a. from the date of publication of Award till realization. These issues are decided accordingly.

ORDER

The reference is answered on the contest in favour of the workman. Lumpsum compensation amount of Rs.2,50,000/- (Rupees Two Lakhs Fifty Thousand) besides an amount towards unpaid wages @ 9300/-per month for the period from 1/6/2013 to 4/7/2013, is hereby awarded in favour of the claimant/workman which shall be paid by the Management within three months from the date of publication of the Award, failing which the claimant will be entitled to recover the same alongwith interest @ 6% p.a. from the date of publication of Award till realization. Award is passed accordingly. Let copy of this Award be sent for publication as required under Section 17 of the Act.

Dictated & corrected by me.

PRANITA MOHANTY, Presiding Officer

26th September, 2019

नई दिल्ली, 30 अक्तूबर, 2019

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[सं. एल-42025/07/2019-आईआर (डीयू)]

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PRESENT : SMT. PRANITA MOHANTY, Presiding Officer, CGIT-cum-Labour Court-II, New Delhi

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Date of Passing Award : 26th September, 2019

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Appearances :-

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AWARD

This award shall decide a claim which has been filed directly by the Workman/claimant Shri Harish Kumar, under Section 2(A) of the Industrial Disputes Act (hereinafter referred to as "the Act"), with the averments that he had been working as Waiter w.e.f. 18/8/1996 under the Management, though no appointment letter, leave book, identity card, overtime, increment, transport allowance, Bonus etc. was paid to him. He worked with dedication and honesty and gave no chance of any complaint. His last drawn wages were Rs.7222/- per month. The workman alongwith co-workers through Union approached the ALC/ Conciliation Officer for regularization of their services and a settlement was arrived at between the parties before the ALC on 10/5/2013. Instead of implementing the terms of the settlement, the Management started leveling false allegations against the claimant and when he protested, the Management terminated his services on 5/7/2013 without giving him any prior notice or notice pay or charge sheet etc., and thereby the Management violated the provisions of Section 25-F of the Act. Even wages for the period from 1/6/2013 to 4/7/2013 were not paid to the claimant. The workman got sent demand/legal notice through registered cover to the Management but to no response. The claimant through Union approached ALC but to no avail. Despite best efforts, the workman/claimant could not get any job or work and he is unemployed since the date of his illegal termination. Prayer has been made for reinstatement into service with full back wages and continuity of service.

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8. Firstly I take up this issue regarding maintainability of the claim petition. Learned A/R for the Management streneously argued that this Tribunal has no jurisdiction to entertain the claim petition since the Management PMC Officers' Mess wherein the claimant was engaged on need base, is not an "Industry" within the meaning of Section 2(j) of the Act, because the said Mess is performing a function supportive to Army which performs a sovereign function and main object of R&R Army Officers Mess is to provide dining and single Officer accommodation for serving Officers of the defence services and/or their families posted to R&R Hospital till they get regular official accommodation. As such, the reference is not legally maintainable.

9. Per-contra, learned A/R for the workman submitted that this Tribunal has all powers to adjudicate and decide the claim petition under the provisions of the Act because the Management PMC Officers' Mess being a subsidiary of AHR&R Hospital, Delhi Cantt. is an "industry" as defined under Section 2(j) of the Act.

10. I may mention that the workman/claimant was admittedly engaged & employed by the Management – may be on temporary/need basis, as a Waiter and this fact is also borne out from the testimony of MW1 Shri Monal Kansra who explained in his cross examination that he knew the workman Harish Kumar since **he was working from 2007 to 2010 in R&R Officers Mess Delhi Cantt,** during his (witness) tenure of posting. Testimony of the workman/claimant that he worked under the Management from 18/8/1996 till 4/7/2013 has gone unchallenged and unassailed. As such, the claimant is a workman, within the meaning of Section 2(s) of the Act. It is noteable that the definition of "workman" does not make any distinction between full time and part time employee or a person appointed on contract/temporary basis. There is nothing in the plain language of Section 2(s) from which it can be inferred that only person employed on regular basis or a person employed for doing whole time job is a workman and the one employed on temporary, part time or contract basis on fixed wages or as a casual employee or for doing duty for fixed hours in not a workman. Reference may be made to the decision of Hon'ble Supreme Court in the case of Davinder Singh Vs. Municipal Council Sanaur, AIR 2011 (SC 2532).

11. Just because the Management PMC Officers Mess is catering dining services to the Army Officers or that it is non profitable organization, it will be improper to say that the same is performing sovereign functions and is not an "industry". The Management has filed on record documents viz. Ex.R-1 & R-2 are the Mess Rules; Ex.R-3 is copy of the letter dated 31/3/1999 issued by Deputy Secretary to the Govt. Of India regarding recognition of Military Hospitals Civil Workers Unions; Ex.R-4 is the copy of minutes of General Body Mess meeting held on 24/8/2012 and Ex.R-5 is the copy of the reply dated 20/7/2013 which the Management had sent to the ALC. These documents are of no help to the Management, as a bare perusal thereof does not in any way show that PMC Officers Mess is performing "sovereign function". I may mention that the Hon'ble Apex Court in the case of **Bangalore Water Supply & Sewage Board Vs. A. Rajappa AIR 1978 SC 548** dealt at length with the ambit and scope of expression "industry" as defined under Section 2(j) of the Act and held as under:-

"(a) Where a complex of activities, some of which qualify for exemption, other not involves employees on the total undertaking some of whom are not "workman" as in the University of Delhi case (supra) or some departments are not productive of goods and services, if isolated, even then the predominant nature of the services and integrated nature of the departments as explained in the Corporation of Nagpur (supra) will be the true test. The whole undertaking will be "industry" although those who are not "workmen" by definition may not benefit by the statue.

(b) Notwithstanding the previous clauses, sovereign functions strictly understood (alone) qualify for exemption, not the welfare activities or economic adventures undertaken by the Government or Statutory bodies.

(c) Even in departments discharging sovereign functions, **if there are units which are industries and they are substantially severable, they can be considered to come within Section 2(j).**

(d) Constitutional and competently enacted legislative provisions may well remove from the scope of the Act, categories which otherwise may be covered thereby

(e) We overrule Safdarjung (supra), Solicitors' case (supra), Gymkhana (supra), Delhi University (supra) Dhanrajgiri Hospital (supra) and other ruling whose ratio run counter to the principles enunciated above and Hospital Mazdoor Sabha (supra) is hereby rehabilitated.

12. In view of the law enunciated by the Apex Court, as discussed above, I am of the considered view that PMC Officers Mess being substantially severable unit from the Indian Army, is an "Industry" under Section 2(j) of the Act.

As such, it is held that the Management is an "Industry" qua the claimant/workman who was simply working as Waiter and that the present claim petition is maintainable. This issue is answered accordingly in favour of the workman.

Issue No. 1 to 3 :-

13. All these issues being co-related are taken up together and same can be disposed of conveniently by common discussion.

14. From the pleadings of the parties and evidence adduced on record, it is manifest that the claimant/workman worked under the Management as Guard from 18/8/1996 till 4/7/2013. His last drawn wages were Rs.7222/- per month. Although the Management laid much stress on the point that the services of the claimant were contractual and need basis, however no document has been filed on record to prove the same or to show that the services of the claimant came to an end after expiry of the period mentioned in the contract between the parties. On the contrary, testimony of the claimant that he worked continuously from 18/8/1996 to 4/7/2013 has gone unchallenged and unassailed. The workman/claimant has filed on record copy of the claim (Mark-A) which he had filed before Labour Commissioner, seeking regularization of his services by the Management and copy of the settlement dated 10/5/2013 (Mark-B) arrived at between the parties before the Conciliation Officer, which inter alia provided as under :-

> "6. The Management shall ensure that no workman are paid wages at rate less than the minimum rate of wages.
>
> 7. That the Management is paying some Diwali Bonus but henceforth shall ensure payment of at least 8.33% of annual basis to all the workmen.
>
> 8. That the Management shall provide free OPD Medical treatment to the workmen concerned and their dependents…."

Testimony of the claimant/workman that the Management terminated his services w.e.f. 05/7/2013 without giving him any notice or notice pay has gone unchallenged. Testimony of the claimant/workman that he was not paid wages for the period from 1/6/2013 to 4/7/2013 has also gone unassailed. Though the Management has pleaded that the Management had offered one month's salary to the claimant & he had refused to receive the same, yet no documentary evidence in the form of written letter/offer has been filed on record to substantiate the same. A suggestion to this effect was given to the workman/claimant but he had specifically denied the same. The Management has not filed any document in the form of receipt or voucher etc. to show that in fact wages for the period from 1/6/2013 to 4/7/2013 were paid to the workman. Thus, there is nothing on record to show that the Management had either paid earned wages for the period from 1/6/2013 to 4/7/0213 to the workman or it had issued any notice to the claimant before ordering his termination, or has paid one month's salary in lieu of such notice as required under Section 25-F of the Act or that the Management had given notice to the appropriate Government about their intention of disengaging/discharging the workman from service. I may mention that provisions of Section 25-F of the Act which provides for conditions precedent to retrenchment of workmen, are absolute and inexorable and it reads as under :-

> "25-F : **Conditions precedent to retrenchment of workmen** –
>
> No workman employed in any industry who has been in continuous service for not less than one year under an employer shall be retrenched by that employer until –
>
> (a) The workman has been given one month's notice in writing indicating the reasons for retrenchment and the period of notice has expired, or the workman has been paid in lieu of such notice, wages for the period of the notice;
>
> (b) The workman has been paid, at the time of retrenchment, compensation which shall be equivalent to fifteen days' average pay for every completed years of continuous service or any part thereof in excess of six months; and
>
> (c) Notice in the prescribed manner is served on the appropriate Government or such authority as may be specified by the appropriate Government by notification in the Official Gazette."

The above provision makes it clear that **the employer is required to give notice to the appropriate Government** apart-from giving one month's notice in writing or one month's wages in lieu of the notice and payment of retrenchment compensation to the concerned workman.

15. There is long line of decisions of Hon'ble Apex Court as well as of various High Courts that provisions of Section 25-F of the Act are mandatory in nature and termination of the workman from services in derogation of the provisions of Section 25-F of the Act will render whole action of the Management to be illegal and wrong under the law. Since there is no evidence on record that any valid notice was issued by the Management to the workman at the time of termination or in lieu of such notice, any compensation was paid to him, as such action of the Management in terminating the services of the workman w.e.f. 5/7/2013 is held to be illegal and void.

16. Now the crucial question for consideration is whether the claimant is entitled to any incidental relief of payment of back wages and/or reinstatement of service. It stands proved on record that claimant was working as Waiter under the Management since 1996 till his termination w.ef.5/7/2013. There is pleading in the claim petition as well as evidence to the effect that the workman is unemployed since the day of his termination and has got no source of his livelihood.. The Management has not adduced any evidence to show that the claimant is gainfully employed somewhere else or that he is in a position to make his both ends meet by doing any work. Even if it is assumed that the claimant is doing some intermittent or ad-hoc work to make his both ends meet, that would not itself amount to gainful employment.

17. The Hon'ble Apex Court in case ***"Deepali Gundu Surwase v. Kranti Junior Adhyapak Mahavidyalaya"*** reported as (2013) 10 SCC 324 has held as under :

"The propositions which can be culled out from the aforementioned judgments are :

i) In cases of wrongful termination of service, reinstatement with continuity of service and back wages is the normal rule.

ii) Ordinarily, an employee or workman whose services are terminated and who is desirous of getting back wages is required to either plead or at least make a statement before the adjudicating authority or the Court of first instance that he/she was not gainfully employed or was employed on lesser wages. If the employer wants to avoid payment of full back wages, then I has to plead and also lead cogent evidence to prove that the employee/workman was gainfully employed and was getting wages equal to the wages he/she was drawing prior to the termination of service. This is so because it is settled law that the burden of proof of the existence of a particular fact lies on the person who makes a positive averments about its existence. It is always easier to prove a positive fact than to prove a negative fact. Therefore, once the employee shows that he was employed, the onus lies on the employer to specifically plead and prove that the employee was gainfully employed and was getting the same or substantially similar emoluments."

18. The Hon'ble Apex Court also held that different expressions are used for describing the consequence of termination of a workman's service/employment/engagement by way of retrenchment without complying with the mandate of Section 25F of the Act. Sometimes it has been termed as ab initio void, sometimes as illegal per se, sometime as nullity and sometimes as non est. Leaving aside the legal semantics, we have no hesitation to hold that termination of service of an employee by way of retrenchment without complying with the requirement of giving one month's notice or pay in lieu thereof and compensation in terms of Section 25F (a) and (b) has the effect of rendering the action of the employer nullity and the employee is entitled to continue in employment as if his service was not terminated. (*Anoop Sharma Vs. Executive Engineer, Public Health Division No.1 Panipat* (2010) 5 SCC 497).

19. However, Hon'ble Apex Court in the case **General Manager, Haryana Roadways Vs. Rudan Singh, reported as 2005 SCC (L&S) 716** observed as under :-

"8. There is no rule of thumb that in every case where the Industrial Tribunal gives a finding that the termination of service was in violation of Section 25-F of the Act, entire back wages should be awarded. A host of factors like the manner and method of selection and appointment i.e. whether after proper advertisement of the vacancy or inviting applications from the employment exchange, nature of appointment namely, whether ad hoc, short term, daily wage, temporary or permanent in character, any special qualification required for the job and the like should be weighed and balanced in taking a decision regarding award of back wages. *One of the important factors which has to be taken into consideration is the length of service, which the workman had rendered with the employer. If the workman has rendered a considerable period of service and his services are wrongfully terminated, he may be awarded full or partial back wages keeping in view the fact that at this age and the qualification possessed by him he may not be in a position to get another employment. However, where the total length of service rendered by a workman is very small, the award of back wages for the complete period i.e. from the date of termination till the date of the award, which our experience shows is often quite large, would be wholly inappropriate. A regular service of permanent character cannot be compared to short or intermittent daily wage employment though it may be for 240 days in a calendar year."*

There is nothing on record to suggest that the claimant/workman had secured the job either through employment exchange or through proper recruitment mode. There is also nothing on record to show that job of the claimant was on permanent basis. His last drawn wages were only to the tune of Rs.7222/- per month. Needless to mention that there are number of factors which are required to be considered by the Tribunal while considering the question of reinstatement with back wages. It has been held in the case of Hari Nandan Prasad Vs. Food Corporation of India (2014) 7 Supreme Court cases 190 as under :-

"Relief by way of reinstatement with back wages is not automatic and may be wholly inappropriate in a given fact situation even though the termination of an employee is in contravention of the prescribed procedure. Compensation

instead of reinstatement has been held to meet the ends of justice. An order of retrenchment passed in violation of Section 25-F although may be set aside but an award of reinstatement should not, however, automatically passed. The award of reinstatement with full back wages in a case where the workman has completed 240 days of work in a year preceding the date of termination, particularly daily wages has not been found to be proper by the Supreme Court and instead compensation has been awarded. The Supreme Court has distinguished between a daily wager who does not hold a post and a permanent employee. **The reasons for denying the relief of reinstatement in such cases are obvious. It is trite law that when the termination is found to be illegal, because of non payment of retrenchment compensation and notice pay as mandatorily required under Section 25-F of the Industrial Disputes Act, even after reinstatement, it is always open to the management to terminate the services of that employee by paying him the retrenchment compensation.**

20. Having regard to the judicial trends as also the facts & circumstances of the present case, this Tribunal considers that ends of justice will meet if compensation amount of Rs.Two lakhs (Rupees Two Lakhs) besides wages for the period from 1/6/2013 to 4/7/2013 @ 7222/-per month, is awarded to the workman/claimant. Therefore, aforesaid compensation amount is hereby awarded in favour of the claimant/workman, which shall be paid by the Management within three months from the date of publication of the Award, failing which the claimant will be entitled to recover the same alongwith interest @ 6% p.a. from the date of publication of Award till realization. These issues are decided accordingly.

ORDER

The reference is answered on the contest in favour of the workman. Lumpsum compensation amount of Rs.2,00,000/- (Rupees Two Lakhs) besides wages @ 7222/-per month for the period from 1/6/2013 to 4/7/2013, is hereby awarded in favour of the claimant/workman which shall be paid by the Management within three months from the date of publication of the Award, failing which the claimant will be entitled to recover the same alongwith interest @ 6% p.a. from the date of publication of Award till realization. Award is passed accordingly. Let copy of this Award be sent for publication as required under Section 17 of the Act.

Dictated & corrected by me.

PRANITA MOHANTY, Presiding Officer

26th September, 2019

नई दिल्ली, 30 अक्तूबर, 2019

का.आ. 1916.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार मेसर्स महानिदेशक, भारतीय पुरातत्व सर्वेक्षण, नई दिल्ली और अन्य एवं उनके कर्मचारी के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, चंडीगढ़ के पंचाट (संदर्भ संख्या 120/2011) को प्रकाशित करती है जो केन्द्रीय सरकार को 25.10.2019 को प्राप्त हुए थे ।

[सं. एल-42011/54/2010-आईआर (डीयू)]

वी. के. ठाकुर, अनुभाग अधिकारी

New Delhi, the 30th October, 2019

S.O. 1916.—In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 120/2011) of the Central Government Industrial Tribunal-cum-Labour Court Chandigarh as shown in the Annexure, in the Industrial dispute between the employers in relation to The Director General, Archaeological Survey of India, New Delhi & Others, and their workmen which were received by the Central Government on 25.10.2019.

[No. L-42011/54/2010-IR (DU)]

V. K. THAKUR, Section Officer

ANNEXURE

IN THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT-II, CHANDIGARH

Present: Sh. A. K. Singh, Presiding Officer

ID No. 120/2011

Registered on:-05.04.2011

Workmen of Survey of India, Department through Bharatiya Puratatav Survekashan Vibhag Karamchari Sangh, C/o Sh. Ashawani Sood, Near Sidhnath Mandir, Baijnath, Distt. Kangra (HP). Petitioner/Workmen

Versus

1. Director General, Archaeological Survey of India, 11 Janpath, New Delhi.
2. Superintending Archaeologist, Archaeological Survey of India, Him Lok Parisar, C.G.O. Complex, Shimla Circle, IIIrd Floor, S-Block, Longwood, Shimla(HP)-171001.
3. Conversation Assistant, Archaeological Survey of India, Kangra Qila, Kangra, Tehsil & Distt. Chamba (HP).
4. Conversation Assistant, Archaeological Survey of India, Laxmi Narain Mandir, Tehsil:Chamba, Distt. Chamba (HP).
5. Conversation Assistant, Archaeological Survey of India, Triloki Nath Mandir, Purani Mandi, Tehsil & Distt. Mandi (HP). Respondents/Management

AWARD

Passed on :-01.10.2019

Central Government vide Notification No. L-42011/54/2010-IR(DU) Dated 22.03.2011, under clause (d) of sub-section (1) and sub-section (2A) of Section 10 of the Industrial Disputes Act, 1947 (hereinafter called the Act), has referred the following Industrial dispute for adjudication to this Tribunal:-

> "Whether the demand of Shri Pritam Singh and 33 others (as per list enclosed) represented through Bharatiya Puratatav Survekashan Vibhag Karamchari Sangh, Shimla in the establishment of Superintending Archaeologist, Archaeological Survey of India, Shimla for regularisation of their service from the dates mentioned against each are legal and justified? What relief the workmen are entitled to?"

1. Both the parties were served with notices. The workmen appeared and filed their claim statement, alleging therein that claimant- Bharatiya Puratatav Survekashan Vibhag Karamchari Sangh is authorized through a resolution adopted by the workmen in their general body meeting held on 12.08.2009 to serve a demand notice upon the respondents incorporating their demands therein. The applicant/workmen are working in the respondents/management from the last 10 to 17 years on daily wages basis and are being paid their wages with the rates of the wages fixed by the Deputy Commissioners of the concerned district from time to time. The list of the workers is Annexure-1 attached with the order of reference. All the workers were appointed on the dates mentioned against each workman in Annexure-1 and they are working continuously and uninterruptedly on different designations and posts similar to the regular employees of the respondents/managements. They are performing the identical duties as are performed by the regular employees of the respondents/managements. The letter of the respondents dated 31.01.1997 issued by the managements regarding the duties of regular and daily wagers is Annexure-A. There is a continuous interchange in the employees in the department of respondents. Daily wage workers have been worked for 240 days in every year and there is no break in service. The attendance and the duties are marked in the joint register which is possession of the respondents and job which is performed by both the regular and daily wager is of perennial nature and both are getting bonus on every Diwali by the respondents. Respondent no.1 issued letters dated 25.03.2009 and 11.05.2009 for making the wages to the petitioners/workmen at the rate of 1/30th of the pay at the minimum pay scales of the regular post plus D.A. w.e.f. 01.04.2005, which has not been complied by the respondents in spite of the repeated request made by the petitioners/workers. The petitioners/workers working on daily wage basis and they have been engaged on regular sanctioned post as such, have acquired considerable long experience given by the respondents to the petitioners to be

performed which make them for entitlement of regularization of their service on which they have holding till now. The security of the service is essential to give best to the post. The government has been issuing the policies for the regularization of daily wager, ad hoc, casual workers but respondents every time did not consider the cases of the petitioners-regularization for the reasons best known to them. But they had regularized only favourites, relatives of domestic servants and juniors to the petitioners on regular basis during the year 2000. Therefore, it is prayed that Hon'ble Tribunal to pass award in favour of the petitioners/workmen for giving them regularization/putting them on regular cadre on the posts they are holding along with regular pay scale, D.A., bonus, difference of pay increased due to the revision of pay scales and leave etc. from time to time in the interest of justice.

2. Respondents/managements has filed their written statement, alleging therein that the workmen have no locus standi to invoke the provisions of Industrial Disputes Act as they have been appointed as a daily wager, engaged on muster rolls on the basis of need and work available. The applicants have worked in the respondent-organization, which is engaged in the maintenance of ancient monuments and archaeological sites for their conservation and reservation which are entirely is a regal function of the state and thus, not included in the definition of Industry as defined under Industrial Disputes Act. So the present application is not maintainable before the Tribunal. The workers are engaged for the works which are purely casual/seasonal in nature like removal of vegetation, cleaning drain, removal of other wild growth from protected monuments and sites etc. hence, they cannot be treated as a regular employees. The attendance and duties of the petitioners/workmen are not marked in the joint register instead attendance was marked on muster roll by the regular workers only. It is further submitted that getting same amount of bonus is a matter of gratitude and not a valid ground of proving identical terms of employment. The letters dated 25.03.2009 and 11.05.2009 attached with Annexure R-1 by the respondents were only directory in nature and they are paid 1/30th of the pay at the minimum scale of pay w.e.f. 01.08.2010 as such, no dues of any casual labour/daily wager is due with the respondents. It is further submitted that as per government existing rules and procedure of appointment merely possessing the requisite qualification does not entitle regularization as a matter of right. The claimant/workers were never appointed against regular vacant post hence, the regularization to the said post cannot be claimed as a matter of right.

3. The petitioners/workmen have filed their replication, alleging therein that they have been appointed on different sites of respondents in Himachal Pradesh on the dates mentioned in Annexure-1 against each workmen after they were interviewed by the respondents prior to their appointment. Thus, respondents intentionally did not issue appointment letters to the petitioners/workmen, adopting unfair labour practice so that they could have no proof of the service in the respondents/managements. The services rendered by the petitioners/workmen are of regular and perennial in nature and those works available with the respondents/managements all the times. There are more than 1878 sanctioned posts lying vacant with the respondents/managements against which the petitioners/workmen have been appointed which are going to be filled up. The remaining facts alleged in the replication are same as alleged in the claim petition as such, it does not required to be repeated again.

4. In order to prove their case, workmen have submitted the affidavit of Shashi Pal, General Secretary of the Union as Ex.A-1, who has proved Annexure W1 to W8 filed with the affidavit. Similarly, one of the workmen Bidhi Singh has also been examined who has submitted his affidavit Ex.A-2 along with documents attached with the affidavit. Witness Shashi Pal, General Secretary of the Union has deposed in his cross-examination that he was appointed on 01.07.1995 as per Central Government rates on daily wages without any appointment letter. He has further deposed that the terms and conditions of the service were not given to him. Cross-examination of the witness Bidhi Singh is in the line of the cross-examination of the witness Shashi Pal, General Secretary, who has alleged that terms and conditions of service were not given to him at the time of appointment. These witnesses have stated that few persons have been regularized by the respondents/managements.

5. Management has examined P.L. Meena, Superintendent of A.S.O.I., Shimla, who has filed his affidavit Ex.R-1 along with Annexure A-1 to A-5 as a part of his statement. This witness has deposed that workmen were engaged in the year 1991 onwards by Chandigarh circle and they are still working with the respondents/managements at minimum wages. Witness P.L. Meena has further deposed that Shimla circle separated from Chandigarh circle on 30.11.2005 and

Chandigarh circle started paying to the labours at 1/30th of the minimum of pay-scale from 2005 whereas the same pay was given to the staff employed at Shimla circle from the year 2010.

6. I have heard Sh. Ashwani Verma, Ld. Counsel for the petitioners/workmen and Sh. V.K. Arya, Ld. Counsel for the respondents/managements and have carefully gone through the evidence led by both the parties and given thoughtful consideration raised by the learned counsels during the course of arguments.

7. Learned counsel of the petitioner/workmen argued that the petitioner/workmen are working continuously from the last more than 19 to 25 years as monument attendant casual beldar for watch and ward duties, which is admitted by the respondents/managements in their reply with respect of Para 2 of the claim statement. It is further submitted by Ex.W-1 is the list of casual workers as Annexure-2 with the record produced by the management and which is further supported by the reference list. It is further argued that the petitioners/workmen are continuously doing the perennial nature of work which is similar to their counterpart's temporary status in the light of the circular dated 31.01.1997 passed by the department assigning similar duties to the regular monument attendant/temporary status/casual workers. It is further contended that in fact the muster rolls filed by the respective parties reveals that the petitioners/workmen and their counterpart's temporary workers were engaged for watch and ward duty due to shortage of regular staff for upkeep of the monument of the respondents/managements, which is attached as Annexure-11 and 12(colly). The petitioners/workmen had completed 240 days in each calendar year, which is denied by the respondents/managements and same is admitted in Para 3 and 4 of the management-evidence/affidavit. Learned counsel further argued that in fact charge list prepared and maintained by the respondents/managements further signifies that charges being taken and handed over by the regular staff and the petitioner/workmen are similar and as per the instructions passed by them. Learned counsel further argued that the counterparts of the petitioner/workmen of the Chandigarh circle were getting minimum wages at the rate of 1/30th from 01.05.2005 while petitioners/workmen were not paid by the department for the reasons best known to them though, all the affairs of Shimla circle before bifurcation of Chandigarh circle were under the control of the Chandigarh circle. Learned counsel would contend that petitioner/workmen made many representations from the year 2005 to 2015 for regularization of their services and to pay them at par to the Chandigarh circle from the year 2005 but no heed was paid by the respondents/managements and further in the meantime this matter was referred to the Hon'ble Tribunal by the reference dated 22.03.2011. Learned counsel while drawing the attention of the Tribunal towards Annexure-2 filed by the management dated 15.02.2017 vide which the department sanctioned payment of wages @ 1/30 of the relevant pay-scale plus grade pay plus D.A. to the workmen from 01.08.2010 without any arrears, mentioning that the petitioners/workmen(casual labour) were engaged due to shortage of regular staff and as per the guidelines dated 07.06.1988, 15.12.1988, 11.05.2009 and 06.10.2009 pertaining to Annexure A-2, A-3 and Ex.W4 and Government of India(DoPT) and DG ASI, New Delhi dated 03.08.2010 from which it can be inferred that the workmen were doing the similar nature of work as to the regular staff and their counterparts and further the appointment of the workmen is not illegal nor backdoor entries. In spite of several instructions and issuance of policies, the respondents/managements has not considered regularization of the petitioners/workmen for the reasons best know to them while only favourits, relatives of domestic servants and junior to the petitioners/workmen were appointed on regular basis by the respondents/managements during the year 2000. It is further argued that there are still 1365 posts are vacant with the respondents/managements, which is not disputed by the respondents/managements. Learned counsel further argued that irony of the fate is that the A.S.I. department till date has not taken any steps to regularize as a one time measure the services of the workmen while their counterparts T.S. casual workers who were engaged in 1987 onwards has now been regularized vide order dated 21.08.2015, which is Anexure-16 and thus, the department has violated their own instructions dated 11.12.2006. Learned counsel argued that it is crystal clear that the respondents/managements is engaged in unfair trade practice and have violated Section 2ra, 25-T, 25-U and point 10 of the 5th Schedule of the ID Act as well as their own instructions. Learned counsel has placed reliance of the cases of Secretary, State of Karnataka Vs. Uma Devi 2006 AIR(SC), State of Karnataka Vs. M.L. Kesari , 2010 AIR(SC) 2587, Durgapur Casual Workers Union Vs. FCI, 2015(5) SCC 786, Tamil Nadu Terminated Full Time Temporary LIC Emp. Assoc. Vs. LIC of India (SC) 2015(2), LLJ 335, Workmen Bhurkunda Colliery Vs. Management, 2006(3) SCC 297, Narendra Kumar Tiwari & Ors. Vs. State of Jharkhand & Ors. 2018 (SC) 3589, Ghulam Nabi Ahanger and Others. Vs. Union of India and Others, SWP

No.290/2018 dated 12.11.2018(J&K High Court) as well as in the case of Suresh Kumar and Oths. Vs. Union of India and others OA No.060/00641/2017 dated 07.01.2019.

8. Management counsel argued that workmen have no locus standi to invoke the provisions of Industrial Disputes Act as they had never been appointed on the basis of any interview against any regular post. All these workmen are daily wagers engaged on muster rolls on the basis of need of work and availability of work. It is further argued that respondents/managements is engaged in the maintenance of ancient monuments and archaeological sites for their conservation and preservation as such, not included in the definition of industry as defined under Industrial Disputes Act, 1947. The services rendered by the workmen on various centrally protected monuments and sites are all purely casual, seasonal nature and sites besides occasional watch and ward attending petty repairs, etc. therefore is casual labours and daily wagers cannot be treated as a regular employee. The attendance and duty is marked in the joint register and work of regular and daily wagers is of perennial nature. In fact, the attendance of regular workers are marked on attendance register while attendance of casual labours/daily wagers were marked on muster rolls by the regular workers only. The letter dated 25.03.2009 and 11.05.2009 were only directory in nature. It is further argued that as per existing government rules and regulations and procedure, serving for sometime or attaining relevant qualification or experience does not entitle to regularization as a matter of right in view of the judgment of Secretary, State Bank of Karnataka & Others Vs. Umadevi, JT 2006(4) SC 1.

9. Before entering into discussion of actual controversy between the parties, it will be pertinent to mention those facts which are either admitted between the parties or not controverted by managements in its pleadings or evidence. The employment of the workmen in the establishment of respondents from the dates mentioned against their name in Annexure 1 attached with the reference order is not disputed. Similarly, it is also not disputed that they are rendering their services continuously to the respondents till today without any break in service and getting bonus as permanent and regular employees of the managements/respondents. There is no dispute that managements/respondents did not initiate proceeding for their regularization in the light of judgment of Uma Devi case and subsequent reference of the Government as per direction vide order dated 11.12.2006. This fact is also not disputed that workmen were initially employed under Chandigarh circle and subsequently, Chandigarh unit bifurcated and Shimla unit of Archaeological Survey of India came into existence on 30.11.2005. The payment to the workmen of Chandigarh circle at the rate of 1/30th of the minimum of relevant pay scale from the year 2005 is also not disputed between the parties while same pay is given to the staff employed in Shimla circle from the year 2010. Last but not the least, the nature of job assigned to the workmen is almost same as to the contesting workmen.

10. It is worthwhile to mention here that the definition of 'industry' as provided under Section 2(J) of the Act, is in two parts. In its first part it means any business, trade, undertaking, manufacture or calling of employers. This part of definition determines an industry by reference to occupation of employers in respect of certain activities. These activities are specified by five words and they determine when an industry is and what the cognate expression 'industrial' is intended to convey. The second part views the matter from the angle of employees and is designed to include something more in what the term primarily denotes. This part gives extended connotation. If the activity can be described as an industry with reference to the occupation of the employers, the ambit of the industry, under the force of the second part, takes in the different kinds of activity of the employees mentioned in the second part. But, the second part alone cannot define 'industry'. An industry is not to be found in every case of employment or service. By the inclusive part of the definition the labour force employed in an industry is made an integral part of the industry for purposes of industrial disputes although industry is ordinarily something which employers create or undertake. Before the work engaged in by an employer can be described against industry, it must bear the definite character of 'trade' or 'business' or 'manufacture' or 'calling' or must be capable of being described as an undertaking resulting in material goods or material services. Where an activity is to be considered as an industry, it must not be casual but must be distinctly systematic and the wok for which workmen are employed must be productive and the workmen must be following an employment, calling or industrial avocation. The word 'industry' must take its colour from the definition and that it discloses that a

workman is to be regarded as one employed in an industry if he is following one of the vocations mentioned in conjunction with his employers engaged in the vocation mentioned in relation to the employers."

11. Hon'ble Apex Court in the case of Banglore Water Supply & Sewerage Board Vs. A. Rajappa 1978(36) FLR 266 dealt at length with the ambit and scope of expression "industry" as defined in Section 2(J) of the Act and held as under "-

"(a) Where a complex of activities some of which qualify for exemption, others not involves employees on the total undertaking some of whom are not "workman" as in the University of Delhi case (supra) or some departments are not productive of goods and services, if isolated, even then the predominant nature of the services and integrated nature of the departments as explained in the Corporation of Nagpur (supra) will be the true test. The whole undertaking will be "industry" although those who are not 'workmen' by definition may not benefit by the status.

(b) Notwithstanding the previous clauses, sovereign functions strictly understood (alone) qualify for exemption not the welfare activities or economic adventures undertaken by Government or Statutory bodies.

(c) Even in departments discharging sovereign functions, if there are units which are industries and they are substantially severable, they can be considered to come within section 2(j).

(d) Constitutional and competently enacted legislative provisions way well remove from the scope of the Act categories which otherwise may be covered thereby.

(e) We overrule Safdarjung (supra), Solicitors' case (supra), Gymkhana (supra), Delhi University (supra), Dhanrajgiri Hospital (supra) and other ruling whose ratio runs counter to the principles enunciated above and Hospital Mazdoor Sabha (supra) is hereby rehabilitated."

Seven Judges Bench of the Hon'ble Supreme Court in the case of Bangalore Water Supply(supra) has laid down triple test for determining whether a particular establishment is industry or not. The triple test is where (a) systematic activity (b) organised by cooperation between employer and employee(the direct and substantial element is commercial (c) for the production or distribution of goods and services to calculated to satisfy human wants and wishes prima facie is an "Industry" in that enterprise. Coming into the case in hand, the work assigned to the workmen and their attendance rules and regulations governing the services of the workmen, relations of employer and employee, sale of tickets for visitors and object of preservation of ancient monuments, temples etc. with the cooperation of workmen and management is well established by the evidence produced by either parties. Hence, this Tribunal of the considered opinion that Archaeological Survey of India is a "Industry". The reference may be made to the judgment of the Hon'ble Apex Court in Bharat Sanchar Nigam Ltd. Vs. Maan Singh, 2012(1), SCT page 641.

12. So far as question pertaining to the regularization of workman are concerned, learned counsel of claimants/petitioners argued that Tribunal has got power under Industrial Disputes Act, 1947, to pass an order of regularization if the circumstances and facts of the case so requires. In this connection, learned counsel of the management argued in the light of the judgment of Secretary, State Bank of Karnataka & Others Vs. Umadevi, (supra), that regularization of the workmen in question is out of purview of jurisdiction of Tribunal because they are daily wager/casual workers employed in the management on need basis and subject to the availability of the fund. Learned counsel of the workman has drawn my attention towards the judgment of Maharashtra State Road Transport Corporaiton Ltd. Vs. Casterbe Rajya Parivahan Karamchari Sanghalana, (2009) 8 SCC 556(in short "Casterbe"), saying that the judgments of the Hon'ble Apex Courts culls out the ratio of the judgment of Umadevi and holds it as a verdict not applicable to industrial workers or workmen by definition to whom the protective rights flowing from Entry 10 of the Fifth Schedule of the Industrial Disputes Act, 1947, employing by way of unfair labour practice(workmen as badlis, casual or temporaries and continue for them as such years with the object of depriving them of the status and privileges of permanent workmen). Undoubtedly, the Constitution Bench of the Hon'ble Supreme Court in Umadevi case has directed regularization of those workers who have extended 10 years or more than 10 years of service on the date of

judgment against duly sanctioned post but not covered under the order of Courts or of Tribunals for one time regularization. The question which arises for consideration is whether judgment of Umadevi stands distinguished and explained in the landmark judgment delivered by the Court in Casterbe. The judgment of the Supreme Court dealt with the State Law of Maharashtra cited as The Maharasthra Recognition of Trade Unions and Prevention of Unfair Labour Practice Act, 1971, (MRTU & PULP Act). The Court dealt with Section 21(1) and its proviso; Schedule IV Items 2, 5, 6 and 9 and especially with Item 6 which is in pari material with the provisions of Entry 10 of the 5th Schedule to the Industrial Disputes Act, 1947, the commonality being a facet of unfair labour practice to keep workmen as badlis, casuals or temporaries and to continue them as such "for years" with the object of depriving them of the status and previleges of permanent workmen. The Constitution Bench in Umadevi was explained in Para 35 in Casterbe as follows:-

35. Umadevi (3) 1 is an authoritative pronouncement for the proposition that the Supreme Court (Article 32) and the High Courts (Article 226) should not issue directions of absorption, regularization or permanent continuance of temporary, contractual, casual, daily wage or ad hoc employees unless the recruitment itself was made regularly in terms of the constitutional scheme.

36. Umadevi (3)1 does not denude the Industrial and Labour Courts of their statutory power under Section 30 read with Section 32 of the MRTU and PULP Act to order permanency of the workers who have been victims of unfair labour practice on the part of the employer under Item 6 of Schedule IV where the posts on which they have been working exist. Umadevi (3) cannot be held to have overridden the powers of the Industrial and Labour Courts in passing appropriate order under Section 30 of the MRTU and PULP Act, once unfair labour practice on the part of the employer under Item 6 of Schedule IV is established."

The Hon'ble Court in the case of Casteribe has rejected the argument raised by the corporation by observing that Industrial/Labour Court under the Act has got specific power to take affirmative action against the erring employers and orders can well be made to accord permanency to the employers affected by such unfair labour practice. However, the victims of unfair labour practice of the employer deserve freedom of permanency where facts and circumstanced demand in the canvas of Casteribe.

13. It is pertinent to mention that the judgment of Casteribe dealt with MRTU & PULP Act enacted by the State of Maharashtra but the provisions of unfair labour practice are identical to Entry 10 of the 5th Schedule to the Industrial Disputes Act, 1947. Entry 10 is a statutory protection against individual discrimination and exploitation provided the discrimination continues 'for years'. It would follow that short duration of employment is per se not violative of Entry 10 of the Act and length of employment becomes relevant consideration to examine unfair labour practice issues. In Umadevi the Constitution Bench protected regularization done but those appointments which were not sub judice could not be reopened. In terms of Umadevi, a distinction will have to be kept in mind between irregular appointments and illegal ones in view of the directions in para 44 to para 46, and thus a distinction would also have to be kept in mind between regularization and giving permanency.

14. Though Casteribe is a case arising out of industrial adjudication on a complaint made by the Union of workers that the affected employees were engaged by the Corporation as casual labourers for cleaning the buses between 198-1985 but the contested issue before the labour tribunal was whether the workers could be granted the status of permanency on par with other permanent cleaners. The Industrial Court, Bombay held that the complaint regarding unfair labour practice against the Corporation under Item 6 of Schedule IV was not maintainable. However, the complaints were maintainable in respect of the unfair labour practice under items 5, 9 and 10. A finding was returned that unfair labour practice has been committed under items 5 and 9 of schedule IV, Section 30 of the Maharashtra State Act empowers the Industrial and the Labour Courts to decide on any person named in the complaint if he has engaged in or is engaging in any unfair labour practice. It may in its order give declarations and directions accordingly. Items 5, 6 and 9 of Schedule IV to the MRTU & PULP Acts need to be seen. They read:-

"5. To show favouritism or partiality to one set of workers, regardless of merits.

6. To employ employees as "badlis", casuals or temporaries and to continue them as such for years, with the object of depriving them of the status and privileges of permanent employees.

9. Failure to implement award, settlement or agreement."

15. Item 6 of Schedule IV is identical to Entry 10 of the 5th Schedule to the Central Act and, therefore, would suffer common interpretation. The expression "unfair labour practice" in Section 2(ra) of the Industrial Disputes Act, 1947 is defined to mean any of the practices specified in the 5th Schedule. It may be noted that the Industrial Disputes Act, 1947 does not contain a provision like Section 30 of the MRTU & PULP Act in Maharashtra. Unfair labour practice in the Central Act are placed in Chapter VC. Section 25T and 25U deal with prohibition and penalty for committing unfair labour practice. Thus, there is a complete statutory prohibition against an employer, workmen or trade union against committing an unfair labour practice. Though the consequences of violating the provisions of Section 25T of the Industrial Disputes Act is punishment with imprisonment but that does not mean that the Labour Court is barred to exercise its powers of making declarations and issuing directions where a prima facie case is made out of violation of the law. In fact, Entry 10 of the 5th schedule is a rule against exploitation. It is a rule against modern day slavery and against unfair domination. Unfair labour practice is akin to unfair discrimination. They both belong to the same family. Entry 10 of the Central Act and Entry 6 of the Maharashtra Act pre-supposes that a body of workers under the same employer and doing the same thing are permanent while others not. Unfair labour practice would thus fall in the same cluster of grounds of challenge of administrative action as those when the Writ Court deals with in cases of malafides, malice in law, malice in fact, bias, colourable exercise or power or abuse of authority and so on and so forth. Merely because the Central Act does not contain specific provisions such as those in MRTU & PULP Act and of Section 30 thereof, it would not denude this Tribunal to remove unfair discrimination whenever found in the light of discussion of Casteribe case.

16. Looking the nature of dispute between the parties, the observation made by the Hon'ble Supreme Court in the case of Harjinder Singh Vs. Punjab State Warehousing Corporation, (2010) 3 SCC 192, becomes relevant in which it has held in Para 30 and 31 of the judgment as follows:-

"30. Of late, there has been a visible shift in the courts approach in dealing with the cases involving the interpretation of social welfare legislations. The attractive mantras of globalization and liberalization are fast becoming the raison d'etre of the judicial process and an impression has been created that the constitutional courts are no longer sympathetic towards the plight of industrial and unorganized workers. In large number of cases like the present one, relief has been denied to the employees falling in the category of workmen, who are illegally retrenched from service by creating by-lanes and side-lanes in the jurisprudence developed by this Court in three decades. The stock plea raised by the public employer in such cases is that the initial employment/engagement of the workman-employee was contrary to some or the other statute or that reinstatement of the workman will put unbearable burden on the financial health of the establishment. The courts have readily accepted such plea unmindful of the accountability of the wrong doer and indirectly punished the tiny beneficiary of the wrong ignoring the fact that he may have continued in the employment for years together and that micro wages earned by him may be the only source of his livelihood.

31. It need no emphasis that if a man is deprived of his livelihood, he is deprived of all his fundamental and constitutional rights and for him the goal of social and economic justice, equality of status and of opportunity, the freedoms enshrined in the Constitution remain illusory. Therefore, the approach of the courts must be compatible with the constitutional philosophy of which the Directive Principles of State Policy constitute an integral part and justice due to the workman should not be denied by entertaining the specious and untenable grounds put forward by the employer-public or private."

17. Similarly, the Supreme Court in Narendra Kumar Tiwari & others versus State of Jharkhand & others, civil appeal nos.7423-7429 of 2018 (arising out of S.L.P. (Civil) Nos.19832-19838 of 2017) observed that the purpose and intent of the decision in Umadevi was two-fold: To prevent irregular or illegal appointments in the future and secondly, to confer a benefit on those who had been irregularly appointed in the past. The Apex Court observed that the fact that the State of Jharkhand continued with the irregular appointments for almost a decade after the decision in Umadevi (3) is

a clear indication that it believes that it was all right to continue with irregular appointments, and whenever required, terminate the services of the irregularly appointed employees on the ground that they were irregularly appointed. The Apex Court held that this is nothing but a form of exploitation of the employees by not giving them the benefits of regularization and by placing the sword of Damocles over their head. This is precisely what Umadevi (3) and Kesari sought to avoid.

18. The fundamental question that arises for consideration in the background of the above discussed case laws is that claimants/workmen have expanded more than 10 years in the service of the respondents in spite of the fact that there still exists 1365 vacant posts of Multi Tasking Staff in A.S.O.I. Learned counsel of the respondents/managements contended that the appointment of the workmen were on daily wages/casual labours as such, they have no fundamental right to be regularized because the post already existed has to be filled up by Staff Selection Commission as per Annexure 5 for which recruitment rules have been framed copy of which is enclosed with the order. Annexure 5 is an order regarding the recruitment of Multi Tasking Staff, which was initially Group-D post and subsequently were made as Group-C and M.T.S. vide Annexure 5 have no any rules and regulations for the recruitment before the Order dated 17.06.2015. Learned counsel of the workmen contended that initial appointment were made in pursuance of the registration in Employment Exchange and these claimants/workmen have already made their registration either before their initial appointment or subsequently and related documents are already on record. There is no dispute that the work likely assigned to for the newly recruited M.T.S. Staff is the same which are already carried out by the workmen for such a long time without any complaints. If the contention of the learned counsel of the managements/respondents is deemed to be valid the petitioners/workmen despite rendering service of more that 19 to 25 years cannot be considered for regularization which will be against the law and fair play.

19. Next question which is argued by the learned counsel of the petitioners/workmen relates to the payment as per Para 4 of the DoPT OM No.7688 at par as given to their counterparts of the workmen doing the same nature of work under the Chandigarh circle. This is admitted by the managements/respondents counsel that the counterparts of the workmen of the Chandigarh circle are getting salary at the rate of 1/30th of minimum of relevant pay scale from 01.05.2005 but this facility is not provided to the claimants/petitioners for the best reasons known to the respondents/managements despite of the fact that the petitioners/workmen are working and were engaged by Chandigarh circle along with the workmen/petitioners who are paid at the rate of 1/30th of minimum of relevant pay scale from the year 2005. Learned counsel of the respondents/managements contended that the direction pertaining to the DoPT OM dated 07.06.1988 and subsequent are in the nature of directory and not mandatory hence, it is not binding on the management. I am not satisfied with the argument advanced by the learned counsel of the respondents/managements in the light of the settled position of law. Hon'ble Supreme Court while deciding case of Needar and others Vs. Delhi Administration and Others, Writ Petition No.9609-10/1983 dated 29.09.1988, and discussing several judgments of Apex Court has clarified that the principle of equal pay for equal work in relation to temporary employees(daily wager employees, ad hoc appointees, employees appointed on casual labours, casual employees and likewise) the sole factor that requires for determination is whether the concerned-employees are rendering similar duties and responsibilities as being discharged by the regular employees. There is no dispute that the counterparts of the petitioners/workmen rendering service at Chandigarh circle were employed with the applicants/workmen and they are rendering the same duties and responsibilities which have been rendered by the claimants/workmen at Shimla circle. There is no dispute that the counterparts of the workmen rendering service at Chandigarh circle are getting salary at the rate of 1/30th of minimum of relevant pay scale from the year 2005 plus grade pay plus D.A. from 01.05.2005. Hence, applicants/workmen are also entitled for the same treatment of payment to the Chandigarh staff which were paid at the rate of 1/30th of minimum of relevant pay scale plus grade pay plus D.A. etc. from the year 2005.

20. It is pertinent to mention that in case of Harjinder Singh Vs. Punjab State Warehousing Corporation, (1020) 3 SCC 192, a sea change was brought about by a quick series of judgments with Harjinder Singh in the lead. The Court's deep anguish in Courts contributing to emasculating the original scheme of labour laws could not have been expressed

with greater pathos than in para. 30-31 which observations are significant in the present context and can be profitably mentioned as follows:-

> "30. Of late, there has been a visible shift in the courts approach in dealing with the cases involving the interpretation of social welfare legislations. The attractive mantras of globalization and liberalisation are fast becoming the raison d'etre of the judicial process and an impression has been created that the constitutional courts are no longer sympathetic towards the plight of industrial and unorganized workers. In large number of cases like the Kumar Paritosh 2014.05.28 16:40 I attest to the accuracy and integrity of this document CWP No.10017 of 2011 and connected petitions 66 present one, relief has been denied to the employees falling in the category of workmen, who are illegally retrenched from service by creating by-lanes and side-lanes in the jurisprudence developed by this Court in three decades. The stock plea raised by the public employer in such cases is that the initial employment/engagement of the workman- employee was contrary to some or the other statute or that reinstatement of the workman will put unbearable burden on the financial health of the establishment. The courts have readily accepted such plea unmindful of the accountability of the wrong doer and indirectly punished the tiny beneficiary of the wrong ignoring the fact that he may have continued in the employment for years together and that micro wages earned by him may be the only source of his livelihood.

31. It need no emphasis that if a man is deprived of his livelihood, he is deprived of all his fundamental and constitutional rights and for him the goal of social and economic justice, equality of status and of opportunity, the freedoms enshrined in the Constitution remain illusory. Therefore, the approach of the courts must be compatible with the constitutional philosophy of which the Directive Principles of State Policy constitute an integral part and justice due to the workman should not be denied by entertaining the specious and untenable grounds put forward by the employer - public or private."

21. Against the background of above facts and law and the thread of judgments read together, this Tribunal is of the considered opinion that respondents/managements are under legal obligation to accord regularization of the petitioners/workmen from the date when they have completed 10 years continuous service against the date of joining mentioned in the list attached with reference. Similarly, workmen Partap Chand S/o Yan Dass and Kamal Kishor S/o Sri Ram mentioned in the list filed by workmen-counsel as Annexure A-1 and impleaded vide Tribunal Order dated 23.04.2018 are also entitled for regularisation. Management is also directed to pay the arrears of salary to the workmen at the rate of 1/30th of the minimum of relevant pay-scale from 01.05.2005 to 31.07.2010 as their counterpart of Chandigarh are paid. Accordingly, management of ASOI are directed to comply the award after its notification by the Central Government

A. K. SINGH, Presiding Officer

नई दिल्ली, 30 अक्तूबर, 2019

का.आ. 1917.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार मेसर्स प्रबंध निदेशक, यू.आर. इंफ्रास्ट्रक्चर कंपनी प्राइवेट लिमिटेड बिलासपुर, हिमाचल प्रदेश और अन्य एवं उनके कर्मचारी के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय-2, चंडीगढ़ के पंचाट (संदर्भ संख्या 129/2011) को प्रकाशित करती है जो केन्द्रीय सरकार को 25.10.2019 को प्राप्त हुए थे ।

[सं. एल-42012/200/2010-आईआर (डीयू)]

वी. के. ठाकुर, अनुभाग अधिकारी

New Delhi, the 30th October, 2019

S.O. 1917.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 129/2011) of the Central Government Industrial Tribunal-cum-Labour Court-2 Chandigarh as shown in the Annexure, in the Industrial dispute between the employers in relation to The Managing Director, U.R. Infrastructure Company Private Ltd. Bilaspur, Himachal Pardesh & Others, and their workmen which were received by the Central Government on 25.10.2019.

[No. L-42012/200/2010-IR (DU)]

V. K. THAKUR, Section Officer

ANNEXURE

IN THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT-II, CHANDIGARH

Present: Sh. A.K. Singh, Presiding Officer

ID No.129/2011

Registered on:-28.04.2011

Pawan Kumar S/o Roshan Lal, R/o Villag & PO Slapper, Tehsil Sundernagar,
Distt., Mandi (HP). …Workman

Versus

1. M/S. U.R. Infrastructure Company Private Ltd., Village Chamb, Post Office Harnora, Bilaspur.
2. Project Manager, Italian Thai Development Co. Ltd., Kol Dam Hydra Electric Power Project, Village Kayan, PO Slapper, Teh. Sundernagar, Mandi(HP).
3. The General Manager, Kol Dam Hydro Electric Power Project, NTPC,
VPO Barmana, Bilaspur. ….Respondents/Managements

AWARD
Passed on:-07.10.2019

Central Government vide Notification No. L-42012/200/2010-IR(DU) Dated 01.04.2011, under clause (d) of sub-section (1) and sub-section (2A) of Section 10 of the Industrial Disputes Act, 1947(hereinafter called the Act), has referred the following Industrial dispute for adjudication to this Tribunal:-

> "Whether the action of the management of M/s. U.R. Infrastructure Co. Pvt. Ltd. Sub-contractor of M/s. Italian Thai Development Public Ltd., a contractor of M/s NTPC Ltd. in retrenchment of the services of Shri Pawan Kumar S/o Shri Roshan Lal w.e.f. 01.08.2008 without following the principle of 'last come first go' is legal and justified? What relief the workman is entitled to?"

1. Both the parties were served with notices. The workman appeared and filed statement of claim, alleging therein, that respondent/management no.1 i.e. General Manager, NTPC Ltd. Kol Dam Hydro Electric Power Project, Barnama, is the principal employer and respondent no.2 is the main contractor for respondent no.3 while respondent no.3 is sub-contractor/petty contractor for respondent no.2. The respondent no.2 is engaged for the construction of the Kol Dam Hydro Electric Power Project at Harnoda for power generation. The workman was appointed through respondent No.1 and he joined as Fitter a skilled workman on 06.12.2004 and worked continuously till 14.08.2008 when the employer retrenched the services. The workman was earning wages at the rate of Rs.8,000/- per month. He was retrenched by the employer without any notice or without any compensation as per the provisions of Section 25-F of the Industrial Disputes Act, 1947 while juniors were retained in service which is violation of Section 25-G of the Industrial Disputes Act. It is further stated that there are 700 number of workers working day and night on the project and management is continuously making appointments in various departments but it is surprising that even after raising the demand notice under Section 2-A of the Industrial Disputes Act, 1947, the respondents/managements did not reinstate the services of the workman. The workman after the retrenchment tried his best to find employment but failed to do so because of the present case against the employer and management. Hence, it is prayed that order be passed in favour of the workman for his reinstatement in the interest of justice.

4. Respondent i.e. The General Manager, Kol Dam Hydro Electric Power Project, NTPC, VPO Barmana, Bilaspur, has filed his written statement, alleging therein that it was not the employer of the workman and answering respondent engaged respondent no.2 for construction of said dam who further engaged respondent no.1 as a sub-

contractor and respondent no.1 and the workman was appointed by respondent no.1. The answering respondent has no concern whatsoever and has not the appointing authority in the present case. The facts alleged in the claim petition are misleading just to harass the answering respondent. It is further submitted that the Government of India has made terms of reference in respect of the industrial dispute between workman and M/s Italian Thai Development Ltd., who has been engaged as contractor and M/s UR Infra as sub-contractor by answering respondent. It is further alleged that the Kol Dam Hydro Project has not termed as an industrial establishment as per law.

3. Respondent No.2 i.e. Project Manager, Italian Thai Development Co. Ltd., Kol Dam Hydra Electric Power Project, Village Kayan, PO Slapper, Teh. Sundernagar, Mandi(HP), has filed its written statement with the averment that workman has worked with its contractor intermittently and not continuously as alleged. Workman was issued warning from time to time for his misconduct. Respondent made strictly in accordance with law under compelling circumstances on partial completion of work. As a matter of fact, the construction work at site is leading to completion hence the averments made by the workman in Para 6, 7 and 8 of the claim statement are misleading and misconceived. The workman is gainfully employed and the answering respondent reserves its right to prove the fact of gainful employment at an appropriate stage. The claim petition has no force and is liable to be dismissed.

5. Respondent M/s. U.R. Infrastructure Company Private Ltd., has not filed any written statement.

6. In order to prove his case, workman Pawan Kumar has submitted his affidavit as evidence. He has admitted in his cross examination that he has received Rs.9450/- as retrenchment compensation. This witness has accepted that demand notice Ex.R1 bears his signatures but he does not know about the contents written in the demand notice. Thus, this witness is unable to tell the contents of the demand notice which is sincere ingredients to file claim petition.

7. The affidavit filed by Pankaj Kumar clearly stipulated that workman Pawan Kumar had been paid compensation vide banker's cheque no.40075 dated 31.07.2008 as is also admitted by the claimant/workman.

8. Respondent No.2 has examined Sh. Hem Raj Sharma, who has filed his affidavit as oral evidence who has not cross-examined by the workman-counsel. Thus, the affidavit filed by this witness is uncontroverted.

9. The evidence rendered by the workman as well as respondent, it is very much clear that workman Pawan Kumar had been retrenched by the concerned-respondent in pursuance of the provisions of the Section 25-F of the Industrial Disputes Act with the retrenchment compensation, amounting one month salary as is accepted by the workman Pawan Kumar during his cross-examination.

10. Having gone through the factual and legal proposition, I am of the view that claimant is not entitled for any relief sought through this reference as he has been duly paid retrenchment compensation by the respondent.

11. Let copy of the award be sent to the Central Government for publication as required under Section 17 of the Act.

A. K. SINGH, Presiding Officer

नई दिल्ली, 30 अक्तूबर, 2019

का.आ. 1918.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार मेसर्स प्रबंध निदेशक, यू.आर. इंफ्रास्ट्रक्चर कंपनी प्राइवेट लिमिटेड बिलासपुर, हिमाचल प्रदेश और अन्य एवं उनके कर्मचारी के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय-2, चंडीगढ़ के पंचाट (संदर्भ संख्या 170/2011) को प्रकाशित करती है जो केन्द्रीय सरकार को 25.10.2019 को प्राप्त हुए थे ।

[सं. एल-42012/287/2010-आईआर (डीयू)]

वी. के. ठाकुर, अनुभाग अधिकारी

New Delhi, the 30th October, 2019

S.O. 1918.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 170/2011) of the Central Government Industrial Tribunal-cum-Labour Court-2 Chandigarh as shown in the Annexure, in the Industrial dispute between the employers in relation to The Managing Director, U.R. Infrastructure Company Private Ltd. Bilaspur, Himachal Pardesh & Others, and their workmen which were received by the Central Government on 25.10.2019.

[No. L-42012/287/2010-IR (DU)]

V. K. THAKUR, Section Officer

ANNEXURE

IN THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT-II, CHANDIGARH

Present: Sh. A. K. Singh, Presiding Officer

ID No. 170/2011

Registered on:-24.05.2011

Dilbag Kumar S/o Tulsi Ram, Vill. & PO Bahot Kasol,
Tehsil Sadar, Distt. Bilaspur (HP). …Workman

Versus

1. The Managing Director M/s. U.R. Infrastructure Company Private Ltd., Village Chamb, Post Office Harnora, Bilaspur.
2. The Project Manager, Italian Thai Development Co. Ltd., Kol Dam Hydra Electric Power Project, Village Kayan, PO Slapper, Teh. Sundernagar, Mandi (HP).
3. The General Manager, M/s. NTPC Limited,
   Kol Dam Hydro Electric Power Project, NTPC, VPO Barmana, Bilaspur. …Respondents/Managements

AWARD
Passed on:-07.10.2019

Central Government vide Notification No. L-42012/287/2010-IR(DU) Dated 27.04.2011, under clause (d) of sub-section (1) and sub-section (2A) of Section 10 of the Industrial Disputes Act, 1947(hereinafter called the Act), has referred the following Industrial dispute for adjudication to this Tribunal:-

"Whether the retrenchment of services of Shri Dil Bag Kumar S/o Shri Tulsi Ram w.e.f. 14/08/2008 by the Management of M/s U.R. Infrastructure Company Private Limited, Village Chamb, District Bilaspur a sub contractor of M/s Italian Thai Development Public Limited a contractor of M/s NTPC Limited without following the principal of 'last come first go' is legal and justified? What relief the workman is entitled to from the above employer?"

1. Both the parties were served with notices. The workman appeared and filed statement of claim, alleging therein, that respondent/management no.3 i.e. General Manager, NTPC Ltd. Kol Dam Hydro Electric Power Project, Barnama, is the principal employer and respondent no.2 is the main contractor for respondent no.3 while respondent no.1 is sub-contractor/petty contractor for respondent no.2. The respondent no.2 is engaged for the construction of the Kol Dam Hydro Electric Power Project at Harnoda for power generation. The workman was appointed through respondent no.1 and he joined as Assistant Lab Attandant on 3.1.2005 and worked continuously till 14.08.2008 when the employer retrenched the services. The workman was earning wages at the rate of Rs.8,000/- per month. He was retrenched by the employer without any notice or without any compensation as per the provisions of Section 25-F of the Industrial Disputes Act, 1947 while juniors were retained in service which is violation of Section 25-G of the Industrial Disputes Act. It is further stated that there are 700 number of workers working day and night on the project and management is continuously making appointments in various departments but it is surprising that even after raising the demand notice under Section 2-A of the Industrial Disputes Act, 1947, the respondents/managements did not reinstate the services of the workman. The workman after the retrenchment tried his best to find employment but failed to do so because of the present case against the employer and management. Hence, it is prayed that order be passed in favour of the workman for his reinstatement in the interest of justice.

2. Respondent No.1 i.e. M/S. U.R. Infrastructure Company Private Ltd., Village Chamb, Post Office Harnora, Bilaspur, has not filed any written statement.

3. Respondent No.2 i.e. Project Manager, Italian Thai Development Co. Ltd., Kol Dam Hydra Electric Power Project, Village Kayan, PO Slapper, Teh. Sundernagar, Mandi(HP), has filed its written statement with the averment that workman has worked with its contractor intermittently and not continuously as alleged. It is further alleged that workman was paid Rs.3,605/- as last drawn salary. Workman was issued warning from time to time for his misconduct. Respondent made strictly in accordance with law under compelling circumstances on partial completion of work. As a matter of fact, the construction work at site is leading to completion hence the averments made by the workman in Para 6, 7 and 8 of the claim statement are misleading and misconceived. The workman is gainfully employed and the answering respondent reserves its right to prove the fact of gainful employment at an appropriate stage. The claim petition has no force and is liable to be dismissed.

4. Respondent No.1 i.e. The General Manager, Kol Dam Hydro Electric Power Project, NTPC, VPO Barmana, Bilaspur, has submitted its written statement, alleging therein that it was not the employer of the workman and answering respondent engaged respondent no.2 for construction of said dam who further engaged respondent no.1 as a sub-contractor and respondent no.1 and the workman was appointed by respondent no.1. The answering respondent has no concern whatsoever and has not the appointing authority in the present case. The facts alleged in the claim petition are misleading just to harass the answering respondent. It is further submitted that the Government of India has made terms of reference in respect of the industrial dispute between workman and M/s Italian Thai Development Ltd., who has been engaged as contractor and M/s UR Infra as sub-contractor by answering respondent. It is further alleged that the Kol Dam Hydro Project has not termed as an industrial establishment as per law.

5. In order to prove his case, workman Dilbag Kumar has not submitted his affidavit as evidence in spite of the several opportunities given to him.

6. Respondent No. 1 has not filed any evidence in the form of affidavits.

7. Respondent No. 2 has examined Sh. Hem Raj Sharma, who has filed his affidavit as oral evidence.

8. Respondent No.3 General Manager, NTPC has filed affidavit of Pankaj Kumar, Senior Manager, who has supported the facts alleged in the written statement of respondent.

9. Perusal of the file reveals that there is nothing as documents regarding the services rendered by the workman to respondent no.2 and respondent no.3 but the facts are admitted in their written statement that workman was employed by sub-contractor respondent no.1 and worked intermittently not continuously. Thus, as per the settled position of law, burden lies on the workman to prove the averments made in the claim statement. The workman has not submitted his affidavit in support of the facts alleged in the claim petition but in spite of the several opportunities, he did not ensure his presence before the Tribunal to be cross-examined by the management. As such, legally speaking, the evidence submitted in the form of affidavit by the workman has no force in the eye of law and it will be not read in evidence, resulting the case of no evidence.

10. Having gone through the factual and legal proposition, I am of the view that claimant is not entitled for any relief and the claim petition is liable to be dismissed and the reference is answered accordingly.

A. K. SINGH, Presiding Officer

नई दिल्ली, 30 अक्तूबर, 2019

का.आ. 1919.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार मेसर्स प्रबंध निदेशक, यू.आर. इंफ्रास्ट्रक्चर कंपनी प्राइवेट लिमिटेड बिलासपुर, हिमाचल प्रदेश और अन्य एवं उनके कर्मचारी के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय-2, चंडीगढ़ के पंचाट (संदर्भ संख्या 189/2011) को प्रकाशित करती है जो केन्द्रीय सरकार को 25.10.2019 को प्राप्त हुए थे ।

[सं. एल-42012/274/2010-आईआर (डीयू)]

वी. के. ठाकुर, अनुभाग अधिकारी

New Delhi, the 30th October, 2019

S.O. 1919.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 189/2011) of the Central Government Industrial Tribunal-cum-Labour Court-2 Chandigarh as shown in the Annexure, in the Industrial dispute between the employers in relation to The Managing Director, U.R. Infrastructure Company Private Ltd. Bilaspur, Himachal Pardesh & Others, and their workmen which were received by the Central Government on 25.10.2019.

[No. L-42012/274/2010-IR (DU)]

V. K. THAKUR, Section Officer

ANNEXURE

IN THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT-II, CHANDIGARH

Present: Sh. A. K. Singh, Presiding Officer

ID No.189/2011

Registered on:-08.06.2011

Khem Chand S/o Late Amar Singh, R/o Village Tikary,
PO Maramasit, Tehsil and Distt., Mandi (HP). …Workman

Versus

1. M/s. U.R. Infrastructure Company Private Ltd., Village Chamb, Post Office Harnora, Bilaspur.
2. Project Manager, Italian Thai Development Co. Ltd., Kol Dam Hydra Electric Power Project, Village Kayan, PO Slapper, Teh. Sundernagar, Mandi(HP).
3. The General Manager, M/s. NTPC Limited, Kol Dam Hydro Electric Power Project,
Barmana, Tehsil Sadar, District Bilaspur, Himachal Pardesh. …Respondents/Managements

AWARD
Passed on :-07.10.2019

Central Government vide Notification No. L-42012/274/2010-IR(DU) Dated 06.05.2011, under clause (d) of sub-section (1) and sub-section (2A) of Section 10 of the Industrial Disputes Act, 1947(hereinafter called the Act), has referred the following Industrial dispute for adjudication to this Tribunal:-

> "Whether the retrenchment of services of Shri Khem Chand S/o Late Shri Amar Singh w.e.f. 03/09/2008 by M/s. U.R. Infrastructure Company Private Limited, Village Chamb, Bilaspur a sub contractor of M/s. Italian Thai Development Public Limited a contractor of M/s. NTPC Limited without following the principal of 'last come first go' is legal and justified? What relief the workman is entitled to?"

1. Both the parties were served with notices. The workman appeared and filed statement of claim, alleging therein, that respondent/management no.3 i.e. General Manager, NTPC Ltd. Kol Dam Hydro Electric Power Project, Barnama, is the principal employer and respondent no. 2 is the main contractor for respondent no.1 while respondent no.1 is sub-contractor/petty contractor for respondent no.2. The respondent no.2 is engaged for the construction of the Kol Dam Hydro Electric Power Project at Harnoda for power generation. The workman was appointed through respondent no.1 and he joined as Jr. Fitter in the skilled workman on 04.01.2005 and worked continuously till 03.09.2008 when the employer retrenched the services. The workman was earning wages at the rate of Rs.5,000/- per month and he was earning up to the extent of Rs.8,000/- per month including overtime. He was retrenched by the employer without any notice or without any compensation as per the provisions of Section 25-F of the Industrial Disputes Act, 1947 while juniors were retained in service which is violation of Section 25-G of the Industrial Disputes Act. It is further stated that there are 700 number of workers working day and night on the project and management is continuously making appointments in various departments but it is surprising that even after raising the demand notice under Section 2-A of the Industrial Disputes Act, 1947, the respondents/managements did not reinstate the services of the workman. The workman after the retrenchment tried his best to find employment but failed to do so because of the present case against the employer and management. Hence, it is prayed that order be passed in favour of the workman for his reinstatement in the interest of justice.

4. Respondent i.e. The General Manager, Kol Dam Hydro Electric Power Project, NTPC, VPO Barmana, Bilaspur, has filed his written statement, alleging therein that it was not the employer of the workman and answering respondent engaged respondent no.2 for construction of said dam who further engaged respondent no.1 as a sub-contractor and respondent no.1 and the workman was appointed by respondent no.1. The answering respondent has no concern whatsoever and has not the appointing authority in the present case. The facts alleged in the claim petition are misleading just to harass the answering respondent. It is further submitted that the Government of India has made terms of reference in respect of the industrial dispute between workman and M/s Italian Thai Development Ltd., who has been engaged as contractor and M/s UR Infra as sub-contractor by answering respondent. It is further alleged that the Kol Dam Hydro Project has not termed as an industrial establishment as per law.

3. Respondent i.e. Project Manager, Italian Thai Development Co. Ltd., Kol Dam Hydra Electric Power Project, Village Kayan, PO Slapper, Teh. Sundernagar, Mandi(HP), has filed its written statement with the averment that workman has worked with its contractor intermittently and not continuously as alleged. Workman was issued warning from time to time for his misconduct. Respondent made strictly in accordance with law under compelling circumstances on partial completion of work. As a matter of fact, the construction work at site is leading to completion hence the averments made by the workman in Para 6, 7 and 8 of the claim statement are misleading and misconceived. The workman is gainfully employed and the answering respondent reserves its right to prove the fact of gainful employment at an appropriate stage. The claim petition has no force and is liable to be dismissed.

5. Respondent M/S. U.R. Infrastructure Company Private Ltd., has not filed any written statement.

6. In order to prove his case, workman Khem Chand has submitted his affidavit as evidence who did not turn up for cross-examination in spite of the several opportunities given to him.

7. Respondent U.R. Infrastructure Com. Pvt. Ltd. has not filed any evidence in the form of affidavits.

8. Respondent No.2 has examined Sh. Hem Raj Sharma, who has filed his affidavit as oral evidence.

9. Respondent No.3 has filed affidavit of Pankaj Kumar, working as Senior Manager, who has supported the facts alleged in the written statement of respondents.

10. Perusal of the file reveals that there is nothing as documents regarding the services rendered by the workman to respondent no.2 and respondent no.3 but the facts are admitted in their written statement that workman was employed by sub-contractor U.R. Infrastructure Company Pvt. Ltd. and worked intermittently not continuously. Thus, as per the settled position of law, burden lies on the workman to prove the averments made in the claim statement. The workman has submitted his affidavit in support of the facts alleged in the claim petition but in spite of the several opportunities, he did not ensure his presence before the Tribunal to be cross-examined by the management. As such, legally speaking, the evidence submitted in the form of affidavit by the workman has no force in the eye of law and it will be not read in evidence, resulting the case of no evidence.

11. Having gone through the factual and legal proposition, I am of the view that claimant is not entitled for any relief and the claim petition is liable to be dismissed and the reference is answered accordingly.

A. K. SINGH, Presiding Officer

नई दिल्ली, 30 अक्तूबर, 2019

का.आ. 1920.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार मेसर्स प्रबंध निदेशक, यू.आर. इंफ्रास्ट्रक्चर कंपनी प्राइवेट लिमिटेड बिलासपुर, हिमाचल प्रदेश और अन्य एवं उनके कर्मचारी के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय-2, चंडीगढ़ के पंचाट (संदर्भ संख्या 162/2011) को प्रकाशित करती है जो केन्द्रीय सरकार को 25.10.2019 को प्राप्त हुए थे ।

[सं. एल-42012/284/2010-आईआर (डीयू)]

वी. के. ठाकुर, अनुभाग अधिकारी

New Delhi, the 30th October, 2019

S.O. 1920.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 162/2011) of the Central Government Industrial Tribunal-cum-Labour Court-2 Chandigarh as shown in the Annexure, in the Industrial dispute between the employers in relation to The Managing Director, U.R. Infrastructure Company Private Ltd. Bilaspur, Himachal Pardesh & Others, and their workmen which were received by the Central Government on 25.10.2019.

[No. L-42012/284/2010-IR (DU)]

V. K. THAKUR, Section Officer

ANNEXURE

IN THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT-II, CHANDIGARH

Present: Sh. A. K. Singh, Presiding Officer

ID No.162/2011
Registered on:-24.05.2011

Parmanand S/o Mohan Lal, Vill, Ghuzar, PO Maloh,
Tehsil Sunder Nagar, Mandi (HP). …Workman

Versus

1. M/s. U.R. Infrastructure Company Private Ltd., Village Chamb, Post Office Harnora, Bilaspur.
2. Project Manager, Italian Thai Development Co. Ltd., Kol Dam Hydra Electric Power Project, Village Kayan, PO Slapper, Teh. Sundernagar, Mandi (HP).
3. The General Manager, Kol Dam Hydro Electric Power Project,
NTPC, VPO Barmana, Bilaspur. …Respondents/Managements

AWARD
Passed on:-07.10.2019

Central Government vide Notification No. L-42012/284/2010-IR(DU) Dated 27.04.2011, under clause (d) of sub-section (1) and sub-section (2A) of Section 10 of the Industrial Disputes Act, 1947(hereinafter called the Act), has referred the following Industrial dispute for adjudication to this Tribunal:-

> "Whether the retrenchment of services of Shri Parmanand S/o Shri Mohan Lal w.e.f. 14/08/2008 by the Management of M/s U.R. Infrastructure Company Private Limited, Village Chamb, District Bilaspur a sub contractor of M/s Italian Thai Development Public Limited a contractor of M/s NTPC Limited without following the principal of 'last come first go' is legal and justified? What relief the workman is entitled to from the above employer?"

1. Both the parties were served with notices. The workman appeared and filed statement of claim, alleging therein, that respondent/management no.3 i.e. General Manager, NTPC Ltd. Kol Dam Hydro Electric Power Project, Barnama, is the principal employer and respondent no.2 is the main contractor for respondent no.3 while respondent no.1 is sub-contractor/petty contractor for respondent no.2. The respondent no.2 is engaged for the construction of the Kol Dam Hydro Electric Power Project at Harnoda for power generation. The workman was appointed through respondent no.1 and he joined as Fitter a skilled workman on 06.12.2004 and worked continuously till 14.08.2008 when the employer retrenched the services. The workman was earning wages at the rate of Rs.6,500/- per month. He was retrenched by the employer without any notice or without any compensation as per the provisions of Section 25-F of the Industrial Disputes Act, 1947 while juniors were retained in service which is violation of Section 25-G of the Industrial Disputes Act. It is further stated that there are 700 number of workers working day and night on the project and management is continuously making appointments in various departments but it is surprising that even after raising the demand notice under Section 2-A of the Industrial Disputes Act, 1947, the respondents/managements did not reinstate the services of the workman. The workman after the retrenchment tried his best to find employment but failed to do so because of the present case against the employer and management. Hence, it is prayed that order be passed in favour of the workman for his reinstatement in the interest of justice.

2. Respondent No.1 i.e. M/s. U.R. Infrastructure Company Private Ltd., Village Chamb, Post Office Harnora, Bilaspur, has not filed any written statement.

3. Respondent No.2 i.e. Project Manager, Italian Thai Development Co. Ltd., Kol Dam Hydra Electric Power Project, Village Kayan, PO Slapper, Teh. Sundernagar, Mandi(HP), has filed its written statement with the averment that workman has worked with its contractor intermittently and not continuously as alleged. It is further alleged that workman was paid Rs.3,605/- as last drawn salary. Workman was issued warning from time to time for his misconduct. Respondent made strictly in accordance with law under compelling circumstances on partial completion of work. As a matter of fact, the construction work at site is leading to completion hence the averments made by the workman in Para 6, 7 and 8 of the claim statement are misleading and misconceived. The workman is gainfully employed and the answering respondent reserves its right to prove the fact of gainful employment at an appropriate stage. The claim petition has no force and is liable to be dismissed.

4. Respondent No.3 i.e. The General Manager, Kol Dam Hydro Electric Power Project, NTPC, VPO Barmana, Bilaspur, has submitted its written statement, alleging therein that it was not the employer of the workman and answering respondent engaged respondent no.2 for construction of said dam who further engaged respondent no.1 as a sub-contractor and respondent no.1 and the workman was appointed by respondent no.1. The answering respondent has no concern whatsoever and has not the appointing authority in the present case. The facts alleged in the claim petition are misleading just to harass the answering respondent. It is further submitted that the Government of India has made terms of reference in respect of the industrial dispute between workman and M/s Italian Thai Development Ltd., who has been engaged as contractor and M/s. UR Infra as sub-contractor by answering respondent. It is further alleged that the Kol Dam Hydro Project has not termed as an industrial establishment as per law.

5. In order to prove his case, workman Parmanand has submitted his affidavit as evidence who did not turn up for cross-examination in spite of the several opportunities given to him.

6. Respondent No.1 has not filed any evidence in the form of affidavit.

7. Respondent No.2 has examined Sh. Hem Raj Sharma, who has filed his affidavit as oral evidence.

8. Respondent No.3 has filed affidavit of Pankaj Kumar, working as Senior Manager, who has supported the facts alleged in the written statement of respondents.

9. Perusal of the file reveals that there is nothing as documents regarding the services rendered by the workman to respondent no.2 and respondent no.1 but the facts are admitted in their written statement that workman was employed by sub-contractor respondent no.1 and worked intermittently not continuously. Thus, as per the settled position of law, burden lies on the workman to prove the averments made in the claim statement. The workman has submitted his affidavit in support of the facts alleged in the claim petition but in spite of the several opportunities, he did not ensure his presence before the Tribunal to be cross-examined by the management. As such, legally speaking, the evidence submitted in the form of affidavit by the workman has no force in the eye of law and it will be not read in evidence, resulting the case of no evidence.

10. Having gone through the factual and legal proposition, I am of the view that claimant is not entitled for any relief and the claim petition is liable to be dismissed and the reference is answered accordingly.

A. K. SINGH, Presiding Officer

नई दिल्ली, 30 अक्तूबर, 2019

का.आ.1921.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार मेसर्स ए.के.एस इंजीनियर और ठेकेदार, कोल डैम हाइड्रो इलेक्ट्रिक पावर प्रोजेक्ट, शिमला, हिमाचल प्रदेश और अन्य एवं उनके कर्मचारी के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, चंडीगढ़ के पंचाट (संदर्भ संख्या 224/2011) को प्रकाशित करती है जो केन्द्रीय सरकार को 25.10.2019 को प्राप्त हुए थे ।

[सं. एल-42012/82/2011-आईआर (डीयू)]

वी. के. ठाकुर, अनुभाग अधिकारी

New Delhi, the 30th October, 2019

S.O. 1921.—In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 224/2011) of the Central Government Industrial Tribunal-cum-Labour Court, Chandigarh as shown in the Annexure, in the Industrial dispute between the employers in relation to The AKS Engineers and Contractors, Kol Dam Hydro Electric Power Project, Shimla, Himachal Pradesh & Others, and their workmen which were received by the Central Government on 25.10.2019.

[No. L-42012/82/2011-IR (DU)]

V. K. THAKUR, Section Officer

ANNEXURE

IN THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT-II, CHANDIGARH

Present: Sh. A.K. Singh, Presiding Officer

ID No. 224/2011

Registered on:-08.12.2011

Sanjeev Kumar S/o Jamnu Ram, R/o Village Lower Behli Post Office Upper Behli,
Tehsil Sunder Nagar, District Mandi, Himachal Pradesh. …Workman

Versus

1. M/s. AKS Engineers and Contractors, Kol Dam Hydro Electric Power Project, Sanjay Sadan Chhota shimla-2, District Shimla, Himachal Pradesh.
2. M/s. Italian Thai Development Public Company Ltd., Kol Dam Hydro Electric Power Project, Village Kayan, PO Slapper, Teh. Sunder Nagar, District Mandi, Himachal Pardesh.
3. M/s. NTPC Limited, Kol Dam Hydro Electric Power Project, Barmana,
Tehsil Sadar, District Bilaspur, Himachal Pardesh. …Respondents/Managements

AWARD
Passed on:-07.10.2019

Central Government vide Notification No. L-42012/82/2011-IR(DU) Dated 14.10.2011, under clause (d) of sub-section (1) and sub-section (2A) of Section 10 of the Industrial Disputes Act, 1947(hereinafter called the Act), has referred the following Industrial dispute for adjudication to this Tribunal:-

"Whether the action of the management of M/s. AKS Engineers & Contractors, a contractor of NTPC, in dismissing the services of Shri Sanjeev Kumar, Jr. Driver, S/o Shri Jamnu Ram, w.e.f. 02.12.2008, while working at Kol Dam Hydro Project of NTPC, is legal and justified? What relief the workman is entitled to?"

1. Both the parties were served with notices. The workman appeared and filed statement of claim, alleging therein, that respondent/management no.3 i.e. M/s NTPC Ltd. Kol Dam Hydro Electric Power Project, Barmana, is the principal employer and respondent no.2 is the main contractor for respondent no.3 while respondent no.1 is sub-contractor/petty contractor for respondent no.2. The respondent no.2 is engaged for the construction of the Kol Dam Hydro Electric Power Project at Harnoda for power generation by respondent no.3. The workman was appointed through respondent no.1 as Driver Skilled Workman and he joined the services on 04.08.2004 and worked continuously till 02.12.2008 when the employer terminated his services. The workman was earning wages at the rate of Rs.7,000/- per month including overtime. He was also leader in Kol Dam Workers Union, which was working for the welfare of all the fellow workers. The management put the workman under suspension for no fault vide memo dated 14.07.2008, which was revoked by the management after submission of the explanation by the workman. Management again put workman under suspension vide memo dated 04.09.2008 and Sh. Hem Ram Sharma, Sr. Manager (HR & IR) of respondent no.2 was appointed as enquiry officer. The enquiry officer being the officer of the management did not provide opportunity of hearing to the workman and he was not allowed to lead his defence evidence, resulting the enquiry report illegal, unjustified against the

principle of natural justice. On the basis of the enquiry report, workman was dismissed by the employer-management. He was retrenched by the employer without any notice or without any compensation as per the provisions of Section 25-F of the Industrial Disputes Act, 1947 while juniors were retained in service which is violation of Section 25-G of the Industrial Disputes Act. It is further stated that there are 700 number of workers working day and night on the project and management is continuously making appointments in various departments but it is surprising that even after raising the demand notice under Section 2-A of the Industrial Disputes Act, 1947, the respondents/managements did not reinstate the services of the workman. The workman after the retrenchment tried his best to find employment but failed to do so because of the present case against the employer and management. Hence, it is prayed that that present claim petition may kindly be accepted and award be passed in favour of the workman in the interest of justice.

2. Respondent No.1 i.e. M/s. AKS Engineers & Contractors, has not filed any written statement.

3. Respondent No.2 i.e. Project Manager, Italian Thai Development Co. Ltd., Kol Dam Hydra Electric Power Project, Village Kayan, PO Slapper, Teh. Sundernagar, Mandi(HP), has filed its written statement with the averment that workman had worked with its contractor intermittently and not continuously as alleged. It is further alleged that workman was paid Rs.3,605/- as last drawn salary. The workman was issued show cause notice, warning, charge-sheet and memo to question his work and conduct. He was punished time and again by issuing notices and his services were also terminated for misconduct. The workman was dismissed from service for committing misconduct which was duly proved in a full dressed enquiry in which he fully participated without any demur or protest. The enquiry was conducted in accordance with the principles of natural justice and fair play and workman was given sufficient opportunity to defend himself. The conduct of workman was found unfit on the basis of the finding of the enquiry which was conducted in accordance with law. The remaining facts alleged in the claim petition are denied by the respondent no.2 with the prayer that petition be dismissed with cost.

4. Respondent No.3 i.e. NTPC Kol Dam Hydro Electric Power Project, Barmana, has submitted its written statement, alleging therein that it was not the employer of the workman and answering respondent engaged respondent no.2 for construction of said dam who further engaged respondent no.1 as a sub-contractor and respondent no.1 and the workman was appointed by respondent no.1. The answering respondent has no concern whatsoever and has not the appointing authority in the present case. The facts alleged in the claim petition are misleading just to harass the answering respondent. It is further submitted that the Government of India has made terms of reference in respect of the industrial dispute between workman and M/s Italian Thai Development Ltd., who has been engaged as contractor and M/s. UR Infra as sub-contractor by answering respondent. It is further alleged that the Kol Dam Hydro Project has not termed as an industrial establishment as per law.

5. In order to prove his case, workman Sanjeev Kumar has submitted his affidavit as Ex.WW1 as oral evidence and cross-examined by respondent no.2 and respondent no.3 respectively.

6. Respondent no.2 has submitted affidavit of Sanjeev Kumar while respondent no.3 i.e. M/s NTPC Kol Dam has submitted affidavit of Pankaj Kumar as evidence but none appeared on behalf of the workman to cross-examine the witness of respondent no.2 and 3. Thus, affidavits of these witnesses as evidence remained uncontroverted.

7. Heard the arguments of V.P. Singh, learned counsel of respondent no.3 in the absence of workman and his counsel and perused the file.

8. At the very outset, it may be mentioned that engagement of workman Sanjeev Kumar by respondent no.1 M/s A.K. S Engineers as Sub-Contractor is not disputed, who was sub-contractor of respondent no.2 i.e. M/s Italian Thai Development assigned to construct kol dam of respondent no.3 i.e. M/s NTPC Kol Dam. It is also not disputed that workman was appointed through respondent no.1 on 08.04.2008 and worked with the respondent till his dismissal. Question which remains to be seen regarding claim petition is the fairness of enquiry which is conducted by the witness of respondent no.2 Hem Raj Sharma. Learned counsel of respondent argued that workman was suspended after due enquiry and affording reasonable opportunity to participate in the proceeding as is accepted by the workman Sanjeev Kumar during his cross-examination. So question of unfairness or illegality of enquiry report has no relevance. Workman Sanjeev Kumar during the course of cross-examination has accepted that he participated in the enquiry after receiving show cause notice Ex.R-2 which bears his signature. He has further accepted that Ex.R-3 is the statement given by him during the enquiry which bears his signature. According to this witness, his signatures were obtained by H.R. Sharma

during enquiry but he did not file any complaint against him for signatures on cheques. This witness has further accepted that he did not raise dispute regarding dismissal in the Labour Court and did not participated in conciliation proceedings. Thus, during the course of cross-examination, the facts alleged by the workman is a proof that he was duly given a show cause notice along with charge-sheet and after receiving his explanation, enquiry was marked and Mr. H.R. Sharma was appointed as enquiry officer. The statement of the workman Sanjeev Kumar further fortifies that he had duly participated in the proceeding and made his statement which is Ex.R-3 on the record. The statement of workman Sanjeev Kumar during the enquiry proceeding Ex.R-3 reveals that he had endorsed a statement in his writing that he would not examine any other witness in defence except his statement. Thus, the facts alleged in the claim petition that he was not given opportunity to defend himself is not correct in the light of the endorsement made by him during the course of enquiry. Thus, it is crystal clear that enquiry was conducted in fair and proper way after giving reasonable opportunity in accordance with principle of natural justice.

9. Next question remains to be seen whether the punishment awarded to the claimant/workman is disproportionate to the gravity of the misconduct. Considering the scope of judicial review on the quantum of punishment and referring to various cases in ***Jai Bhagwan Vs. Commissioner of Police & Ors., 2013(4) S.C.T. 607: (2013) 11 SCC 187,*** the Apex Court held as under:-

> ***"What is the appropriate quantum of punishment to be awarded to a delinquent is a matter that primarily rests in the discretion of the disciplinary authority. An authority sitting in appeal over any such order on punishment is by all means entitled to examine the issue regarding the quantum of punishment as much as it is entitled to examine whether the charges have been satisfactorily proved. But when any such order is challenged before a Service Tribunal or the High Court the exercise of discretion by the competent authority in determining and awarding punishment is generally respected except where the same is found to be so outrageously disproportionate to the gravity of the misconduct that the Court considers it be arbitrary in that it is wholly unreasonable. The superior courts and the Tribunal invoke the doctrine of proportionality which has been gradually accepted as one of the facets of judicial review. A punishment that it so excessive or disproportionate to the offence as to shock the conscience of the Court is seen as unacceptable even when courts are slow and generally reluctant to interfere with the quantum of punishment. The law on the subject is well settled by a series of decisions rendered by this Court….."***

10. It is a settled law that punishment or penalty to be imposed by the disciplinary authority against the charges with punishment has to be commensurate with the gravity of alleged misconduct. The suspension order filed with the affidavit of Hem Raj Sharma reveals that several disciplinary actions had been taken against the workman vide order dated 21.01.2005, 09.03.2005, 19.07.2008 and 14.07.2008.

11. Workman Sanjeev Kumar has accepted in his cross-examination that he was given warning and placed under suspension. He has also accepted that he had apologized for sleeping and not attending the duty and company has taken the lenient view. Thus, the statement of workman itself is indicative that in spite of several opportunities, he did not care about his duty and indulged in misconduct several times, resulting the final suspension and dismissal after due course of enquiry. The misconduct alleged against the workman are certainly grave in nature and no management like to engage such type of workman as an employee.

12. Having regard to the above mentioned facts, coupled with gravity of misconduct related to the charges proved against the workman, this Tribunal is of the considered view that punishment against the workman is neither disproportionate nor excessive, warranting penalty of dismissal hence, workman is not entitled for any relief and the petition is liable to be dismissed and the reference is answered accordingly.

13. Let copy of the award be sent to the Central Government for publication as required under Section 17 of the Act.

A. K. SINGH, Presiding Officer

नई दिल्ली, 30 अक्तूबर, 2019

का.आ. 1922.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार मेसर्स प्रबंध निदेशक, यू.आर. इंफ्रास्ट्रक्चर कंपनी प्राइवेट लिमिटेड बिलासपुर, हिमाचल प्रदेश और अन्य एवं उनके कर्मचारी के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय-2, चंडीगढ़ के पंचाट (संदर्भ संख्या 187/2011) को प्रकाशित करती है जो केन्द्रीय सरकार को 25.10.2019 को प्राप्त हुए थे ।

[सं. एल-42012/262/2010-आईआर (डीयू)]

वी. के. ठाकुर, अनुभाग अधिकारी

New Delhi, the 30th October, 2019

S.O. 1922.—In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 187/2011) of the Central Government Industrial Tribunal-cum-Labour Court Chandigarh-2 as shown in the Annexure, in the Industrial dispute between the employers in relation to The Managing Director, U.R. Infrastructure Company Private Ltd. Bilaspur, Himachal Pardesh & Others, and their workmen which were received by the Central Government on 25.10.2019.

[No. L-42012/262/2010-IR (DU)]

V. K. THAKUR, Section Officer

ANNEXURE

IN THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT-II, CHANDIGARH

Present: Sh. A.K. Singh, Presiding Officer

ID No. 187/2011
Registered on:-8.6.2011

Kuldeep Kumar S/o Vijay Ram, Vill. & PO Bahot, Kasol,
Tehsil & Distt. Bilaspur, Himachal Pradesh. …Workman

Versus

1. The Managing Director, M/S. U.R. Infrastructure Company Private Ltd., Kol Dam Hydro Electric Power Project, Chhamb, Post Office Harnora, Tehsil Sadar, District Bilaspur, Himachal Pradesh.
2. The Project Manager, M/s. Italian Thai Development Public Company Ltd., Kol Dam Hydro Electric Power Project, Village Kayan, PO Slapper, Teh. Sunder Nagar, District Mandi, Himachal Pardesh.
3. The General Manager, M/s. NTPC Limited, Kol Dam Hydro Electric Power Project, Barmana, Tehsil Sadar, District Bilaspur, Himachal Pardesh. …Respondents/Managements

AWARD
Passed on:-07.10.2019

Central Government vide Notification No. L-42012/262/2010-IR(DU) Dated 06.05.2011, under clause (d) of sub-section (1) and sub-section (2A) of Section 10 of the Industrial Disputes Act, 1947(hereinafter called the Act), has referred the following Industrial dispute for adjudication to this Tribunal:-

> "Whether the retrenchment of services of Shri Kuldeep Kumar S/o Shri Vijay Ram, Bahot Kasol, Sundernagar by the Project Manager M/s. U.R. Infrastructure Company Private Limited, Site Office, Kyan, Sundernagar vide order dated 22.01.2005 without following the principal of 'last come first go' is legal and justified? What relief the workman is entitled to?"

1. Both the parties were served with notices. The workman appeared and filed statement of claim, alleging therein, that respondent/management no.3 i.e. General Manager, NTPC Ltd. Kol Dam Hydro Electric Power Project, Barnama, is the principal employer and respondent no.2 is the main contractor for respondent no.1 while respondent no.1 is sub-contractor/petty contractor for respondent no.2. The respondent no.2 is engaged for the construction of the Kol Dam Hydro Electric Power Project at Harnoda for power generation. The workman was appointed through respondent no.1 and he joined as Driver in the Skilled workman on 26.01.2005 and worked continuously till 14.08.2008 when the employer retrenched the services. The workman was earning wages at the rate of Rs.5,000/- per month and he was earning up to the extent of Rsa.8,000/- per month including overtime. He was retrenched by the employer without any notice or without any compensation as per the provisions of Section 25-F of the Industrial Disputes Act, 1947 while juniors were retained in service which is violation of Section 25-G of the Industrial Disputes Act. It is further stated that there are 700 number of workers working day and night on the project and management is continuously making appointments in various departments but it is surprising that even after raising the demand notice under Section 2-A of the Industrial Disputes Act, 1947, the respondents/managements did not reinstate the services of the workman. The workman after the retrenchment tried his best to find employment but failed to do so because of the present case against the employer and management. Hence, it is prayed that order be passed in favour of the workman for his reinstatement in the interest of justice.

2. Respondent No.1 i.e. U.R. Infrastructure Company Pvt. Ltd., has not filed any written statement.

3. Respondent No.2 i.e. Project Manager, Italian Thai Development Co. Ltd., Kol Dam Hydra Electric Power Project, Village Kayan, PO Slapper, Teh. Sundernagar, Mandi(HP), has filed its written statement with the averment that workman has worked with its contractor intermittently and not continuously as alleged. It is further alleged that workman was paid Rs.3,605/- as last drawn salary. Workman was issued warning from time to time for his misconduct. Respondent made strictly in accordance with law under compelling circumstances on partial completion of work. As a matter of fact, the construction work at site is leading to completion hence the averments made by the workman in Para 6, 7 and 8 of the claim statement are misleading and misconceived. The workman is gainfully employed and the answering respondent reserves its right to prove the fact of gainful employment at an appropriate stage. The claim petition has no force and is liable to be dismissed.

4. Respondent No.3 i.e. General Manager, NTPC Kol Dam Hydro Electric Power Project, Barmana, has submitted its written statement, alleging therein that it was not the employer of the workman and answering respondent engaged respondent no.2 for construction of said dam who further engaged respondent no.1 as a sub-contractor and respondent no.1 and the workman was appointed by respondent no.1. The answering respondent has no concern whatsoever and has not the appointing authority in the present case. The facts alleged in the claim petition are misleading just to harass the answering respondent. It is further submitted that the Government of India has made terms of reference in respect of the industrial dispute between workman and M/s Italian Thai Development Ltd., who has been engaged as contractor and M/s. UR Infra as sub-contractor by answering respondent. It is further alleged that the Kol Dam Hydro Project has not termed as an industrial establishment as per law.

5. In order to prove his case, workman Kuldeep Kumar has not submitted his affidavit in spite of the several opportunities given to him.

6. Respondent No.1 and 3 has not filed any evidence in the form of affidavits.

7. Respondent No.2 has examined Sh. Hem Raj Sharma, who has filed his affidavit as oral evidence.

8. Perusal of the file reveals that there is nothing as documents regarding the services rendered by the workman to respondent no.2 and respondent no.3 but the facts are admitted in their written statement that workman was employed by sub-contractor respondent no.1 and worked intermittently not continuously. Thus, as per the settled position of law, burden lies on the workman to prove the averments made in the claim statement. The workman has not submitted affidavit in support of the facts alleged in the claim petition in spite of the several opportunities. As such, this a case of no evidence.

9. Having gone through the factual and legal proposition, I am of the view that claimant is not entitled for any relief and the claim petition is liable to be dismissed and the reference is answered accordingly.

A. K. SINGH, Presiding Officer

नई दिल्ली, 30 अक्तूबर, 2019

का.आ. 1923.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार मेसर्स महानिदेशक, भारतीय खेल प्राधिकरण, नई दिल्ली और अन्य एवं उनके कर्मचारी के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय-2, चंडीगढ़ के पंचाट (संदर्भ संख्या 338/2013) को प्रकाशित करती है जो केन्द्रीय सरकार को 25.10.2019 को प्राप्त हुए थे ।

[सं. एल-42012/128/2013-आईआर (डीयू)]

वी. के. ठाकुर, अनुभाग अधिकारी

New Delhi, the 30th October, 2019

S.O. 1923.—In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 338/2013) of the Central Government Industrial Tribunal-cum-Labour Court Chandigarh-2 as shown in the Annexure, in the Industrial dispute between the employers in relation to The Director General, Sport Authority of India, New Delhi & Others, and their workmen which were received by the Central Government on 25.10.2019.

[No. L-42012/128/2013-IR (DU)]

V. K. THAKUR, Section Officer

ANNEXURE

IN THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT-II, CHANDIGARH

Present: Sh. A.K. Singh, Presiding Officer

ID No. 338/2013
Registered on:-24.02.2014

Devender Kumar Sharma, H.No.265, Nerar Leading High School,
Azad Nagar, Hissar, Haryana. …Workman

Versus

1. Sport Authority of India, through its Director General, Jawahar Lal Nehru Stadium, Lodhi Road, New Delhi-110003.
2. Director, Sports Training Centre, Giri Centre, CCS HAU, Hissar, Haryana. …Managements

AWARD
Passed on:-01.10.2019

Central Government vide Notification No. L-42012/128/2013-IR(DU) Dated 10.02.2014, under clause (d) of sub-section (1) and sub-section (2A) of Section 10 of the Industrial Disputes Act, 1947(hereinafter called the Act), has referred the following Industrial dispute for adjudication to this Tribunal:-

> **"Whether the action of the management of the Director, Sports Training Centre, Giri Centre, CCS Hau, Hissar(Haryana), in terminating the servifes of sh. Devender Kumar Sharma, Ex-daily Wages/Grounds Man w.e.f. April, 2010 is just and legal? If not, what relief the workman is entitled to?"**

1. Both the parties were served with notices. The workman appeared and filed claim statement, alleging therein that he was employed as grounds man on 24.01.2002 with the respondent/management no.2 and has been working continuously without any break in service. The workman has been paid salary on the basis of DC rates regularly till December 2010 whereas the workman kept working in the management till April 2010 and salary for the month of January 2010 to April 2010 was paid in the month of May 2010. The services of the workman were terminated orally in the month of April 2010 without any notice or retrenchment compensation while work is still available with the management and workman is nowhere gainfully employed. Workman aggrieved by the action of the management

approached before Hon'ble Central Administrative Tribunal, Principal Bench for the regularization of his services vide OA No. 2552 of 2011, the same was dismissed vide order dated 01.07.2011 copy of the order is attached as Annexure A-1. The workman filed writ petition before the Hon'ble High Court of Delhi and the same was also dismissed on 28.11.2011. The workman was given liberty to made representation before the respondent-management for allowing the workman to continue the work on daily wages but management failed to take any action in spite of the representation made before the competent-authority. Hence, it is prayed that the reference may kindly be allowed in favour of the workman and the management be directed to reinstate the workman from the date of illegal termination along with all back wages and interest @ 18%.

2. Respondent/management filed its written statement, alleging therein that Sports Authority of India is a society registered under the Societies Registration Act, 1860. It is an autonomous body under the administrative control of the Ministry of Youth Affairs and Sports. The workman is not entitled to file the present claim statement as he is neither workman nor respondent-management comes within the definition of industry as is defined under the Industrial Dispute Act as a matter of fact the workman was engaged on daily wages for a certain number of days to work as a groundsman and number of days of his employment varied according to the work available, number of ongoing sports activities which keeps changing from time to time. This Tribunal has got no jurisdiction to adjudicate the dispute regarding the service matters. It is submitted that the workman had made the original application before the Central Administrative Tribunal, Chandigarh and subsequently before the Hon'ble Court of Delhi against the order of the CAT which was dismissed by the Hon'ble Court as there was no regular sanctioned post. Therefore, the services of the workman cannot be regularized in the light of the judgment of ***Secretary, State Bank of Karnataka & Others Vs. Umadevi, JT 2006(4) SC 420.*** It is further stated that workman himself left the job and his services were never terminated by the respondent-management therefore, the workman is not liable to be reinstated into the service. There is no violation of industrial dispute therefore, the applicant/claimant is not entitled for reinstatement in service when he himself left the job. The relevant attendance record of the workman duly maintained by the respondent/management is enclosed herewith as Annexure R-3. It is submitted that the salary of the workman for the period from January 2010 to April 2010 has already been released to him in May 2011 after taking permission from the respondent/management. Hence, it is prayed that the present claim statement of the workman is liable to be dismissed straightaway being devoid of merit in the interest of justice.

3. The workman Devender Kumar in support of his case has examined himself has filed affidavit as annexure A-1 and proved the annexures filed with the claim statement. The facts alleged in the affidavit are in the line of the facts stated in the affidavit of the workman filed as evidence. Surprisingly, learned counsel of the management has not cross-examined this witness in spite of the opportunity given by the Tribunal, merely suggesting in cross-examination that it is incorrect that he has filed a false case. Thus, the evidence filed by the workman through affidavit Ex.A-1 as is in fact uncontroverted by not putting any relevant question to the witness by the learned counsel of the management.

4. Management has not examined any witness in spite of the several opportunities given to him. Consequently, evidence of the management is closed on 09.07.2019. Thus, there is nothing on record in the form of oral evidence put forth by the management as evidence.

5. I have heard Sh. Arun Batra, Ld. Counsel for the workman and Sh. Parveen Goyal, Ld. Counsel for the management and perused the file carefully.

6. Learned counsel of the workman has argued that the workman has joined with the management in the month of January 2002 and worked till his retrenchment/termination in the month of April 2010. It is also submitted that workman has performed his duty directly under the management as is accepted by the management in its written statement. Learned counsel of the workman has vehemently argued that services of the workman is taken in violation of adopting unfair labour practice in spite of the service of more than 9 years and he was retrenched/terminated without giving notice or retrenchment compensation. Learned counsel has further contended that there is no denial of the management regarding the employment of the workman even on daily wages till his alleged retrenchment/termination. Learned counsel further argued that there is no question of voluntarily leaving the employment by the workman as is alleged by the management in its written statement. Learned counsel of the workman has argued that workman has rendered long service of 9 years as such, he is entitled for reinstatement in the light of the judgment of ***Hindustan Tin Works Private Limited Vs. Employees of Hindustan Tin Works Private Limted(1979) 2 SCC 80,*** and in ***Maharashtra State Road Transport and another Vs. Casteribe Rajya Parivahan Karmchari Sanghatana(2009) 8 SCC 556,*** and in the case of ***Ajaypal Singh Vs. Haryana Warehousing Corporation, Civil Appeal No.6327 of 2014, decided on 09.07.2014.***

7. Per contra, learned counsel of the management has vehemently argued that claimant is neither workman nor respondents are industry as is defined under Industrial Disputes Act, 1947. It is also contended that workman has left the job himself hence, question of issuing notice under Section 25-F or payment of retrenchment compensation does not arise. Learned counsel further contended that being a daily waged employee and having not completed 240 days prior to his alleged retrenchment/termination he is not entitled for notice or retrenchment compensation as well. Learned counsel

contended that he was never appointed in due process of law against sanctioned post instead he had worked on daily wage basis as such, he has no right for the job which he has left at his own without any reason. Learned counsel further argued that workman has raised the dispute before the Central Administrative Tribunal, Principal Bench and his claim was dismissed by CAT vide order dated 16.07.2011 and writ petition preferred against the said order is also dismissed by the Hon'ble Delhi High Court vide order dated 28.11.2011 as such, his claim petition is not maintainable before this Tribunal.

8. There is no dispute about preposition of law that onus to prove that claimant was in the employment of the management is always on the workman/claimant and it is for the workman to adduce evidence to prove factum of his employment with the management. Such evidence may be in form of receipt of salary or wages for 240 days or record of his appointment or engagement for that year to show that he was worked with the employer for 240 days or more in a calendar year. In this regard, reference may be made to **Batala Coop. Sugar Mills Ltv. Vs. Sowaran Singh (2005) 8 Supreme Court cases 481 as well as Director Fisheries Terminated Division Vs. Bhikubhai Meghajibhai Gavda (2012) 1 SCC 47**.

9. So far as the argument regarding the claimant being a workman is concerned. In this regard, reference can be made to the decision of ***Devinder Singh Vs. Municipal Council, Sanaur, AIR 2011 Supreme Court 2532***, wherein, the Hon'ble Apex Court while interpreting the provisions of Section 2(S) of the Act which deals with the definition of "workman" has observed as follows:-

> ***"The source of employment, the quantum of recruitment, the terms & conditions of employment/ contract of service, the quantum of wages/ pay and mode of payment are not at all relevant for deciding whether or not a person is a workman within the meaning of Section 2(s) of the Act. The definition of workman also does not make any distinction between full time and part time employee or a person appointed on contract basis. There is nothing in the plain language of Section 2(s) from which it can be inferred that only person employed on regular basis or a person employed for doing whole time job is a workman and the one employed on temporary, part time or contract basis on fixed wages or as a casual employee or for doing duty for fixed hours is not a workman."***

It is clear from the perusal of aforesaid observations that even if a person is engaged on temporary, part time or contract basis or for doing any other kind of work and is duly paid wages for the said work, in that eventuality such a person would be covered by the definition of "workman" as provided in Section 2(S) of the Act. In these circumstances, it stands proved that there existed relationship of employer-employee between the parties.

10. The next question relates with the arguments advanced by the learned counsel of the management that respondents/managements are not "Industry" as is defined in Section 2(J) because respondents/managements are an autonomous body under the control of Ministry of Youth Affairs and Sports, registered under the Societies Registration Act, 1860. I am not convince with the argument of learned counsel of management because being public-authority and enjoying the public fund issued by Central Government. Management is state under Article 12 of the Constitution of India. So far as the legal proposition of management being 'industry' is concerned. The Hon'ble Supreme Court in the case of **Banglore Water Supply & Sewerage Board Vs. A. Rajappa 1978(36) FLR 266** dealt at length with the ambit and scope of expression "Industry" as defined in Section 2(J) of the Act and held as under:—

> ***"(a) Where a complex of activities some of which qualify for exemption, others not involves employees on the total undertaking some of whom are not "workman" as in the University of Delhi case (supra) or some departments are not productive of goods and services, if isolated, even then the predominant nature of the services and integrated nature of the departments as explained in the Corporation of Nagpur (supra) will be the true test. The whole undertaking will be "industry" although those who are not 'workmen' by definition may not benefit by the status.***
>
> ***(b) Notwithstanding the previous clauses, sovereign functions strictly understood (alone) qualify for exemption not the welfare activities or economic adventures undertaken by Government or Statutory bodies.***
>
> ***(c) Even in departments discharging sovereign functions, if there are units which are industries and they are substantially severable, they can be considered to come within section 2(j).***
>
> ***(d) Constitutional and competently enacted legislative provisions way well remove from the scope of the Act categories which otherwise may be covered thereby.***
>
> ***(e) We overrule Safdarjung (supra), Solicitors' case (supra), Gymkhana (supra), Delhi University (supra), Dhanrajgiri Hospital (supra) and other ruling whose ratio runs counter to the principles enunciated above and Hospital Mazdoor Sabha (supra) is hereby rehabilitated."***

There is nothing on record to prove that sports authority of India is doing the charity with the player or enhancing the sports without gain and profit. Management has not filed any document regarding the activities or advantures undertaken by it.

11. It is pertinent to mention that Hon'ble Delhi High Court in the case of ***Sports Authority of India Vs. Sports Authority of India, Kamgar 2005, LLR page 541,*** while referring to the judgment of Hon'ble Supreme Court in the case of ***Banglore Water Supply & Sewerage Board Vs. A. Rajappa 1978(36) FLR 266,*** has held that sports authority is an 'industry' as such, argument advanced by the learned counsel of the management has no force. This conclusion is further fortified by the judgment of Hon'ble Supreme Court in the case of ***Sports Authority of India Vs. Sunil Kumar, 2016(2) SCT Page 71.***

12. Moreover, the cases of Industrial Dispute has to be decided on the basis of principle of **preponderance of probability** rather than proof beyond reasonable doubt as is held by the Hon'ble Supreme Court in the cases of ***Union of India Vs. Sardar Bahadur(1974)4 SCC 618, R.S Singh Vs. State of Punjab and other(1999)8 SCC page 90,*** and in the case of ***State Bank of India Vs. Narender Kumar Pandey, Civil Appeal No. 263/2013 dated 14.01.2013.*** The workman has not only stated on oath regarding the work assigned to him by the respondent-management but has summoned the record regarding his attendance with the management which has been filed by the management in the form of photocopies. Learned counsel of the management contended that the documents which are on record do not reveal that workman has rendered his service continuously and regularly from 24.01.2002 to April 2010. It is pertinent to mention that there is no dispute that there existed relationship of employer and employee or master and servant between the workman and management as such, burden lies on the management to disapprove that he has not worked for 240 days in previous calendar year before his termination. The workman has alleged not only in his statement but also in his affidavit filed as evidence that he continuously worked with the management till his termination. The learned counsel of the management has not put any question from this witness at the time of cross-examination nor has examined any witness to deny the facts alleged by the workman in his affidavit regarding the regular service rendered to the management. So far as the Photostat copies of the documents is concerned, it was in the possession of the management as such, he is at liberty to file as his wish and withdrawing relevant papers in between the year. There is nothing on record to show that how and in what way the workman was paid by the management for his services.

13. The vital question arises for consideration is whether termination of the workman from service by the management from 23.05.2011 is in accordance with law or in violation of the provisions of Section 25-F of the Act. According to the testimony of the workman/claimant the work of Peon on which he had worked was of permanent nature and his services were terminated by the management in violation of Section 25-F of the Act. It is neither the case of the management that any notice or compensation in lieu of notice was given to the workman prior to termination of his services from the month of April 2010 nor any such evidence is adduced on record by the management. In these circumstances, this Tribunal has no hesitation to hold that the services of the workman was terminated by the management from the month of April 2010 in violation of Section 25-F of the Act.

14. There is long line of decisions of Hon'ble Apex Court as well as of various High Courts that provisions of Section 25-F of the Act are mandatory in nature and termination of the workman from services in derogation of the provisions of Section 25-F of the Act will render action of the management to be illegal and void under the law. Since there is no evidence on record that any valid notice was issued by the management to the workman at the time of termination or in lieu of such notice, any compensation was paid to him as such, action of the management in terminating the services of the workman is held to be illegal and void.

15. Now the residual question is whether the workman/claimant is entitled to any incidental relief of payment of back wages and/or reinstatement in service with full back wages. It is proved that claimant was in the service of the management from 24.01.2002 upto April 2010 when his services were terminated by the management without giving any notice or retrenchment compensation. The factum of voluntarily leaving the job by the workman has not been proved by the management through any evidence. There is nothing on record to show that management has issued any notice or letter for the reason or cause of voluntarily leaving the job by the workman as is required to be proved by the management in the light of the judgment of Hon'ble Punjab & Haryana High Court dealing with ***Writ Petition No. 8898 of 1994 dated 30.11.2016, 2017 LLR 95 titled as Kali Ram Vs. Presiding Officer and another***, in which it is held that in such a situation, the contention of the respondent/management that workman has abandoned his service is not acceptable because of non-issuing of show cause notice to join the service back to the workman. Learned counsel of the workman contended that workman is entitled for reinstatement and there is no such bar and this Tribunal has got power to reinstate the workman along with back wages. Contrary to this, learned counsel of the management argued that reinstatement of the workman is not possible in the light of the judgment of the CAT which is filed as annexure A-1 along with judgment

of the Hon'ble High Court of Delhi. I have gone through the judgment of Central Administrative Tribunal and judgment of the Hon'ble High Court, it is pertinent to mention that workman has preferred the petition before the Central Administrative Tribunal, Principal Bench, New Delhi, regarding his regularisation and not for reinstatement and Hon'ble Central Administrative Tribunal has rejected the claim of the workman in the light of the judgment of ***Secretary, State Bank of Karnataka & Others Vs. Umadevi, JT 2006(4) SC 420.*** It is also not disputed that the writ petition preferred by the workman against the order of the Central Administrative Tribunal has been dismissed by the Hon'ble High Court of Delhi vide its order dated 28.11.2011 hence, it cannot be observed that matter regarding the reinstatement has been heard or decided either by the CAT or Hon'ble High Court of Delhi.

16. A Bench of three Judges of the Hon'ble Supreme Court in the case of ***Hindustan Tin Works Private Limited Vs. Employees of Hindustan Tin Works Private Limted(1979) 2 SCC 80,*** held that relief of reinstatement with continuity of service can be granted where termination of service is found to be invalid. It would mean that the employer has taken away illegally the right to work of the workman contrary to the relevant law or in breach of contract and simultaneously deprived the workman of his earnings. If thus the act of employer is found to be totally illegal and arbitrary, in that eventuality the workman is required to be reinstated, with full back wages. Plain common sense also dictates that the removal of an order terminating the services of workmen must ordinarily lead to the reinstatement of the services of the workmen along with payment of back wages.

17. The Hon'ble Supreme Court in the case of ***Ajaypal Singh Vs. Haryana Warehousing Corporation, Civil Appeal No.6327 of 2014, decided on 09.07.2014,*** has held that ***Uma Devi*** case does not denude the industrial and labour courts from their statutory power under the Act. The provisions of the Industrial Disputes Act and the power of Industrial Labour Court provided therein were not at all under the consideration in Uma Devi case. The issue pertaining to unfair labour practice was neither the subject matter of decision nor was decided in Uma Devi case. Consequently, if any part of the provisions of Section 25-F of the Act is violated and employer carried therein unfair labour practice with the object to debar the workman from the privilege provided under the Act, the employer cannot justify such an action by taking the plea with the employment of the employee was in violation of Section 14 and 16 of the Constitution.

18. The Hon'ble Apex Court in case ***"Deepali Gundu Surwase Vs. Kranti Junior Adhyapak Mahavidyalaya" reported as (2013) 10 SCC 324*** has held as under:

> "The propositions which can be culled out from the aforementioned judgments are:
>
> ***"i) In case of wrongful termination of service, reinstatement with continuity of service and back wages is the normal rule.***
>
> ***ii) Ordinarily, an employee or workman whose services are terminated and who is desirous of getting back wages is required to either plead or at least make a statement before the adjudicating authority or the Court of first instance that he was not gainfully employed or was employed on lesser wages. If the employer wants to avoid payment of full back wages, then I has to plead and also lead cogent evidence to prove that the workman wads gainfully employed and was getting wages equal to the wages he wads drawing prior to the termination of service. This is so because it is settled law that the burden of proof of the existence of a particular fact lies on the person who makes a positive averments about its existence. It is always easier to prove a positive fact than to prove a negative fact. Therefore, once the employee shows that he was not employed, the onus lies on the employer to specifically plead and prove that the employee was gainfully employed and was getting the same or substantially similar emoluments."***

19. Having regard to the legal position as discussed above and the facts of the case that claimant was performing the duty as a grounds man, which is perennial in nature, this Tribunal is of the firm view that the claimant herein is entitled for reinstatement into service having status of daily wager with 50% back wages as well as termination of the workman/claimant per se is illegal when the job is regular and perennial in nature and the workman is not gainfully employed anywhere after the termination by the management as is alleged by the workman in his claim statement as well affidavit filed as evidence which is uncontroverted by the management.

A. K. SINGH, Presiding Officer

नई दिल्ली, 30 अक्तूबर, 2019

का.आ. 1924.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार मेसर्स एनटीपीसी लिमिटेड, कोल डैम हाइड्रो इलेक्ट्रिक पावर प्रोजेक्ट, बिलासपुर, हिमाचल प्रदेश और अन्य एवं उनके कर्मचारी के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय-2, चंडीगढ़ के पंचाट (संदर्भ संख्या 76/2010) को प्रकाशित करती है जो केन्द्रीय सरकार को 25.10.2019 को प्राप्त हुए थे ।

[सं. एल-42012/116/2010-आईआर (डीयू)]

वी. के. ठाकुर, अनुभाग अधिकारी

New Delhi, the 30th October, 2019

S.O. 1924.—In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 76/2010) of the Central Government Industrial Tribunal-cum-Labour Court-2 Chandigarh as shown in the Annexure, in the Industrial dispute between the employers in relation to The NTPC Limited, Kol Dam Hydro Electric Power Project, Bilaspur, Himachal Pardesh & Others, and their workmen which were received by the Central Government on 25.10.2019.

[No. L-42012/116/2010-IR (DU)]

V. K. THAKUR, Section Officer

ANNEXURE

IN THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT-II, CHANDIGARH

Present: Sh. A.K. Singh, Presiding Officer

ID No. 76/2010
Registered on:-26.10.2010

Prem Lal S/o Hari Ram, Village Shhayar, Post Office Dhoba,
Tehsil Sadar, District Bilaspur, Himachal Pradesh. …Workman

Versus

1. M/s. NTPC Limited, Kol Dam Hydro Electric Power Project, Barmana, Tehsil Sadar, District Bilaspur, Himachal Pardesh.
2. M/s. Italian Thai Development Public Company Ltd., Kol Dam Hydro Electric Power Project, Village Kayan, PO Slapper, Teh. Sunder Nagar, District Mandi, Himachal Pardesh.
3. M/s. AKS Engineers and Contractors, Kol Dam Hydro Electric Power Project,
Sanjay Sadan Chhota shimla-2, District Shimla, Himachal Pradesh …Respondents/Managements

AWARD

Passed on:-07.10.2019

Central Government vide Notification No. L-42012/110/2010-IR(DU) Dated 29.09.2010, under clause (d) of sub-section (1) and sub-section (2A) of Section 10 of the Industrial Disputes Act, 1947(hereinafter called the Act), has referred the following Industrial dispute for adjudication to this Tribunal:—

"Whether the action of the management of M/s. AKS Engineers & Contractors, a contractor engaged by NTPC Koldam Hydroelectric Power Project, Bilaspur (HP), in terminating the services of their workman Shri Prem Lal S/o Shri Hari Ram, w.e.f. 03.09.2008, is legal and justified? If not, What relief the workman is entitled to?"

1. Both the parties were served with notices. The workman appeared and filed statement of claim, alleging therein, that respondent/management no.1 i.e. M/s. NTPC Ltd. Kol Dam Hydro Electric Power Project, Barmana, is the principal employer and respondent no. 2 is the main contractor for respondent no.1 while respondent no. 3 is sub-contractor/petty contractor for respondent no. 2. The respondent no. 2 is engaged for the construction of the Kol Dam Hydro Electric Power Project at Harnoda for power generation. The workman was appointed through respondent no. 3 as a Driver Skilled Workman and he joined the services on 27.08.2004 and worked continuously till 03.09.2008 when the employer retrenched the services. The workman was earning wages at the rate of Rs. 4,500/- per month. He was retrenched by the employer without any notice or without any compensation as per the provisions of Section 25-F of the Industrial Disputes Act, 1947 while juniors were retained in service which is violation of Section 25-G of the Industrial Disputes Act. It is further stated that there are 700 number of workers working day and night on the project and management is continuously making appointments in various departments but it is surprising that even after raising the demand notice under Section 2-A of the Industrial Disputes Act, 1947, the respondents/managements did not reinstate the services of the workman. The workman after the retrenchment tried his best to find employment but failed to do so because of the present case against the employer and management. Hence, it is prayed that order be passed in favour of the workman for his reinstatement in the interest of justice.

2. Respondent No.1 i.e. General Manager, NTPC Kol Dam Hydro Electric Power Project, Barmana, has submitted its written statement, alleging therein that it was not the employer of the workman and answering respondent engaged respondent no. 2 for construction of said dam who further engaged respondent no.1 as a sub-contractor and respondent no.1 and the workman was appointed by respondent no.1. The answering respondent has no concern whatsoever and has not the appointing authority in the present case. The facts alleged in the claim petition are misleading just to harass the answering respondent. It is further submitted that the Government of India has made terms of reference in respect of the industrial dispute between workman and M/s Italian Thai Development Ltd., who has been engaged as contractor and M/s UR Infra as sub-contractor by answering respondent. It is further alleged that the Kol Dam Hydro Project has not termed as an industrial establishment as per law.

3. Respondent No. 2 i.e. Project Manager, Italian Thai Development Co. Ltd., Kol Dam Hydra Electric Power Project, Village Kayan, PO Slapper, Teh. Sundernagar, Mandi(HP), has filed its written statement with the averment that workman has worked with its contractor intermittently and not continuously as alleged. It is further alleged that workman was paid Rs. 3,605/- as last drawn salary. Workman was issued warning from time to time for his misconduct. Respondent made strictly in accordance with law under compelling circumstances on partial completion of work. As a matter of fact, the construction work at site is leading to completion hence the averments made by the workman in Para 6, 7 and 8 of the claim statement are misleading and misconceived. The workman is gainfully employed and the answering respondent reserves its right to prove the fact of gainful employment at an appropriate stage. The claim petition has no force and is liable to be dismissed.

4. Respondent No. 3 i.e. M/s AKS Engineers & Contractors, has not filed any written statement.

5. In order to prove his case, workman Prem Lal has submitted his affidavit as evidence who did not turn up for cross-examination in spite of the several opportunities given to him.

6. Respondent No.1 has filed affidavit of Pankaj Kumar, working as Senior Manager, who has supported the facts alleged in the written statement of respondents.

7. Respondent No. 2 has examined Sh. Hem Raj Sharma, who has filed his affidavit as oral evidence.

8. Respondent No. 3 has not filed any evidence in the form of affidavit.

9. Perusal of the file reveals that there is nothing as documents regarding the services rendered by the workman to respondent no.3 but the facts are admitted in their written statement that workman was employed by sub-contractor respondent no.3 and worked intermittently not continuously. Thus, as per the settled position of law, burden lies on the workman to prove the averments made in the claim statement. The workman has not submitted affidavit in support of the facts alleged in the claim petition in spite of the several opportunities. As such, this a case of no evidence.

10. Having gone through the factual and legal proposition, I am of the view that claimant is not entitled for any relief and the claim petition is liable to be dismissed and the reference is answered accordingly.

A. K. SINGH, Presiding Officer

नई दिल्ली, 31 अक्तूबर, 2019

का.आ. 1925.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार बैंक ऑफ बडौदा के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, चैन्नई के पंचाट (संदर्भ सं. 42/2018) को प्रकाशित करती है जो केन्द्रीय सरकार को 31.10.2019 को प्राप्त हुआ था।

[सं. एल–39025/01/2019–आईआर (बी–II)]

सीमा बंसल, अनुभाग अधिकारी

New Delhi, 31st October, 2019

S.O. 1925.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 42/2018) of the Cent.Govt. Indus. Tribunal-cum-Labour Court , Chennai as shown in the Annexure, in the industrial dispute between the management of Bank of Baroda, and their workmen, received by the Central Government on 31.10.2019.

[No. L-39025/01/2019-IR(B-II)]

SEEMA BANSAL, Section Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT CHENNAI

ID No. 42/2018

Present: DIPTI MOHAPATRA, LL.M., PRESIDING OFFICER

Date: 23.09.2019

Sri N. Karthikeyan
S/o L. Nagarajan
No. 37/16-D, Chenniyampalayampudhur
Kanjikovil Post, Perunthurai Taluk
Erode-638116 : 1st Party/Petitioner

AND

1. The Branch Manager
   Bank of Baroda, Erode Branch
   Erode District : Respondent

2. The Dy. General Manager
   Bank of Baroda, Regional Office
   Coimbatore : Respondent

3. The General Manager
   (Tamilnadu and Kerala Zone)
   Zonal Office, Mylapore
   Chennai : Respondent

Appearance:

For the 1st Party/Petitioner : Advocate Sri S.P. Srinivasan & Associates

For the 2nd Party/Respondents : Advocates M/s. T.S. Gopalan & Co.

AWARD

This is an Application under 2A(2) of the Industrial Dispute Act.

The Applicant's case in brief is that he joined on 13.12.2012 as Sub-Staff under the Respondent at its newly opened Chennimalai Branch of the Respondent Bank and continued as such till was terminated on 18.12.2014 without any prior notice.

2. Being aggrieved with the order he made a written representation to the Branch Manager on 06.01.2015 who assured him to send the representation to the Regional Office, Coimbatore. No action was taken on his representation nor he was reinstated. He approached the Hon'ble High Court vide Writ Petition No. 39804/2015 which was disposed on 20.07.2017, granting liberty to the petitioner to approach the appropriate authority in this regard. The petitioner accordingly once again approached the Respondent but invain. He approached the Conciliation Officer, Coimbatore. Since there was no Officer, his matter in issue was taken up by the Conciliation Officer, Madurai (Incharge) and the matter was taken to file vide reference no. 7/16/2017-RM. The dispute could not be resolved before the Conciliation Officer, hence the conciliation ended in failure. However, the Conciliation Officer issued a Certificate to the effect enabling the petitioner to approach this Forum of Industrial Tribunal for redressal of his grievance. The Applicant accordingly filed the Application under 2A(2) challenging the termination order dtd. 18.12.2014 of the Respondent.

3. The Respondent entered appearance by filing its Counter that when the rule of limitation is prescribed for approaching the judicial Forum the same will automatically operate irrespective of whatever circumstances in which the delay was caused. The Respondent strenuously raised objection on the issue of Admission on the point of Limitation. Reliance is placed in the case of WP(MD) No. 4269/2017 in the case of ***RAVI KUMAR VS. TAMIL NADU STATE TRANSPORT CORPORATION 2017 SCC MAD 20409*** and in WP(MD) No. 15552/2015 in the case of ***PRINCE PACKIANATHAN VS. THE GENERAL MANAGER, TAMIL NADU TRANSPORT CORPORATION, NAGERCOIL***.

4. Pending disposal of Admission of the ID case, the Counsel for the Applicant moves the petition for withdrawal of the Application where he does not dispute the issues raised on the point of limitation for admission of the 2A(2) Application. It is contended that the petitioner has not approached the Industrial Tribunal directly but on being granted with liberty by the Hon'ble High Court in Writ Petition No. 39804/20155 dtd. 20.07.2017, approached the conciliation proceeding within the period of 3 years from the date of termination.

When the dispute was not resolved before the Conciliation Officer, on being issued with the Certificate by the Conciliation Officer, the petitioner/applicant approached this Forum under 2A(2). Admittedly, the certificate issued by RLC (which is enclosed with the Application) discloses that the mandatory stipulated period of 45 days [in view of 2A(2)] from the date of raising the dispute before the RLC expires on 26.10.2017. As such, the petitioner was at liberty to approach this Forum before expiry of 3 years [in view of 2A(3) of the amended provision of the Act] from the date of the alleged termination i.e. 18.12.2014. But the Applicant approached this Forum on 14.09.2018 which is not within the period of 3 years, but almost 9 months more than the stipulated period of 3 years.

The Learned Counsel for the Applicant-Petitioner advances his submission expressing the Petitioner's desire to approach the appropriate Conciliation Authority once again to try his luck. It is further submitted in case of failure to resolve the dispute, the Conciliation Officer may move the appropriate Government for further follow-up action and if there exists any Industrial Dispute, the appropriate Government may refer the dispute to the Industrial Tribunal for adjudication under 10(1)(d) of the ID Act. The Learned Counsel emphasizes the Applicant-Petitioner may have a fair chance to contest the dispute under the Act, hence prays for withdrawal of the Application.

5. In view of the submission of the Learned Counsel for both parties and discussion held in preceding paragraphs, there is no legal impediment to allow the Applicant for withdrawal of the Application. The Withdrawal Petition is accordingly allowed.

In the result the ID 42/2018 is disposed of.

(Dictated and transcribed by PA and
corrected and pronounced in the open
court on this day the 23rd Sept., 2019)

DIPTI MOHAPATRA, Presiding Officer

नई दिल्ली, 31 अक्तूबर, 2019

का.आ. 1926.—औद्योगिक विवाद अधिनियम 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार बैंक आफ महाराष्ट्र के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय नं. 2, नई दिल्ली के पंचाट (संदर्भ सं. 44/2016) को प्रकाशित करती है जो केन्द्रीय सरकार को 31.10.2019 को प्राप्त हुआ था।

[सं. एल–12011/14/2016–आईआर (बी–II)]

सीमा बंसल, अनुभाग अधिकारी

New Delhi, the 31st October, 2019

S.O. 1926.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 44/2016) of the Cent.Govt.Indus.Tribunal-cum-Labour Court No 2, New Delhi as shown in the Annexure, in the industrial dispute between the management of Bank of Maharashtra, and their workmen, received by the Central Government on 31.10.2019.

[No. L-12011/14/2016-IR(B-II)]

SEEMA BANSAL, Section Officer

ANNEXURE

CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT-II, NEW DELHI

Present: Smt. Pranita Mohanty, Presiding Officer, C.G.I.T.-Cum-Labour Court-II, New Delhi.

INDUSTRIAL DISPUTE CASE NO. 44/2016

Date of Passing Award- 7th August, 2019

Between:

Mahabank Karamchari Sangh (Regd.)
H. No. 347/62A, Model Colony,
Salem Tabri,
Ludhiana,
Punjab- 141008. … Workmen

Versus

The Zonal Manager,
Bank of Maharashtra,
Delhi Zone,15, NBCC Tower, 3rd Floor,
Bhikaji Cama Place,
New Delhi- 110066. …Management

Appearances:-

Shri Kapil Dev (A/R) For the Workman.

Ms. Priyanka (A/R) For the Management

AWARD

The Government of India in Ministry of Labour & Employment has referred the present dispute existing between employer i.e. the management of Bank of Maharashtra, and its workman/claimant herein, under clause (d) of sub-section (1)and sub-section (2A) of section 10 of the Industrial Dispute Act 1947 vide letter No. L-12011/14/2016 [IR(B-II)] dated 19.04.2016 to this tribunal for adjudication to the following effect.

> "Whether the action of the management in not considering the workmen mentioned in Annexure A in the selection process held by the management is illegal and/or unjustified and if so what relief the said workmen are entitled to and what directions are necessary in this respect?"

As per the claim statement the claimant/workmen were working in the management Bank on temporary basis as part time sub-staff for pretty long time. They were often demanding regularization of their service by the management as the management had been adopting unfair labour practice in violation of the Rules framed by the Bank in the matter of appointment of subordinate staff from among the part time employees. The workmen through their union approached the

Assistant Labour Commissioner requesting his intervention in the matter. Despite that the management did not redress the grievance of the workmen and submitted arbitrary reply before the Assistant Labour Commissioner which was incorrect. It is the further stand of the claimant/workmen that they are working in the Bank since the year 2010 and possess the requisite qualification for appointment as regular PTS. The Bank has vacancies of such post in different branches. But intentionally not regularizing the workmen. It has been further pleaded that the management bank had framed rule for appointment of PTS on regular basis and for the same circular dated 07.09.2009 was issued. As per the said circular though these workmen being engaged on temporary basis and having fulfilled the eligibility criteria are to be called for the selection process, the Bank intentionally did not call them to participate in the selection process. Before the ALC during the conciliation proceeding the management Bank took a false plea that these workmen had never applied for the job and thus, they were not called for the interview. When the records were called from the Bank the plea of the bank was found to be false. The conciliation since failed the appropriate Government referred the matter to this tribunal for adjudication. It is the prayer made by the claimants that the total process of selection made by the Bank for appointment of regular PTS be declared illegal since these workmen were not allowed to participate in the selection procedure and they should be treated as permanent employees from the date of their initial appointment and given all benefits attached to the post both financial and promotional.

Being noticed the management bank appeared and filed WS denying all the allegations made by the claimant/workmen. It has been pleaded that the Bank is never indulged in unfair labour practice nor violated the Rules framed for appointment of subordinate staff and part time employees. It has been further pleaded that the management of the Bank issued a circular on 07.09.2009 setting out the guidelines to be followed in appointment of part time sub staff. As per the said circular the candidates who have worked on temporary basis at branches and full filing the eligibility norms are to be allowed to participate in the selection process to fill up the permanent vacancies of PTS. That circular was clear enough to say that only those temporary PTS who were sponsored by the employment exchange for temporary post are to be allowed to participate in the selection process subject to fulfilling the eligibility criteria to be appointed against permanent posts of PTS. These claimants were never appointed as PTS against temporary post nor sponsored by the employment exchange. Thus, rightly the management kept them away from the zone of consideration as provided under the circular dated 07.09.2009. The management has also taken a plea that these claimants were occasionally called to work in different branches of the bank and their engagement was purely on need basis. They were not appointed as temporary PTS and their claim is baseless and they are not entitled to the relief claimed. The intermittent engagement of the claimants in different branches on daily wage basis for cleaning the Branch premises cannot confer any right on them for their regular appointment.

On these rivals pleading the issues were framed for consideration as follows.

ISSUES

1. Whether the action of the management is not considering the workmen mentioned in Annexure-A in the selection process held by the management is illegal and/or unjustified?

2. To what relief the said workmen are entitled to and what directions are necessary in this respect?

During the hearing on behalf of the claimants the workmen namely Dinesh Kumar, Amit Kumar, Bharat Bhushan, and Kapil Dev, testified as WW1, WW2, WW3 and WW4 respectively. WW4 Kapil Dev is the General Secretary of Maha Bank Karamchari Sangh which has espoused the cause of the temporary employee of the Bank. Photocopies of certain document were filed on behalf of the workmen.

On behalf of the management Mrs. Nayna Sahastra-buddhe AGM Bank of Maharashtra testified as MW1. She has also not filed any document. However on behalf of the workman the photocopies of the demand notice, the vacancy position submitted by the Bank by its AGM to the DGM the reply submitted before the ALC showing the list of candidates provided by Maha Bank Karamchari Sangh with regard to their status for the selection process has been filed and marked as WW1/1 to WW1/13. These documents include the application and biodata form submitted by the claimants praying consideration for permanent post.

At the outset of the argument the Ld. A/R for the claimants submitted that on 18.02.2008 the management of the Bank issued a direction to all Regional Heads of the Bank for adopting uniform practice in appointment of part time sub staff (PTS) at Branches and Offices. The letter has been filed and marked as exhibit WW1/5. He further submitted that in this letter instruction was imparted for prompt action to be taken for filling up the vacant post of PTS following the procedure laid down by the HRM department of the Bank (central) office Pune. In the said letter it was also directed that the post are to be filled up by notifying the vacancies to the local employment exchange as well as by publishing advertisement in the local newspaper. After this letter dated 18.02.2008 the Bank again issued a circular on 07.09.2009 clearly prescribing the procedure and source from which the PTS are to be appointed. A copy of this circular has been filed by the claimants as exhibit A and admitted by the management. The Ld. A/R for the claimants submitted that as per the circular dated 07.09.2009 the candidates who have worked on temporary basis at Branches and who are fulfilling the eligibility norms are to be considered for permanent vacancies/allowed to participate in the selection process. While

citing the names of 8 such claimants as a sample in the claim petition the Ld. A/R for the claimants submitted that all the workmen as per Annexure-A attached to the schedule of reference are eligible for consideration against permanent post as they fulfill the requisite qualification, and are within the prescribed age limit and have worked on temporary basis at the Branches of the Bank. But the Bank management intentionally did not allow them to participate in the selection process and took a false plea before the ALC that they had not applied for the post, which was later proved to be false from documents filed by the Bank management before the ALC.

The Ld. A/R for the management in reply argued that neither the letter dated 18.02.2008 nor the letter dated 07.09.2009 has an any applicability in respect of the candidature of the claimants nor makes them eligible to be considered for the post of Permanent PTS. He clarified that the Bank engaged two types of part time sub staff. One category is temporary PTS and other is regular PTS appointed against permanent vacancies as per the roaster maintained in Central office. On 07.09.2009 the Bank management issued a letter to all Regional heads of the Bank management directing them to follow the procedure laid down in the said letter while making such appointment. In the said letter it was further directed that the permanent PTS post are to be notified to the Local Employment Exchange and be advertised in the local news paper inviting applications. In addition to that the temporary PTS working in the Branches of the Bank be allowed to participate in the selection process provided they meet the qualification and age criteria and were engaged being sponsored by the employment exchange. These claimant/workmen were never engaged as temporary PTS being sponsored by the Employment Exchange. They were engaged intermittently on daily wage basis and thus, rightly excluded from the selection procedure.

The circular dated 07.09.2009 refereed by the workmen has been disputed by the management on the ground that the same has no applicability to consider the candidature of the claimant/workmen. This circular has been marked as WW1/6 without objection by the management. A careful perusal of the said circular exhibit WW1/6 reveals that earlier another circular dated 18.02.2008 was issued by the management of the Bank containing guidelines for appointment of permanent part time sub staff (PTS). To clarify certain doubts and anomalies the subsequent circular dated 07.09.2009 was issued. In this circular there is a clear direction under point No.4 that to fillup the permanent vacancies of PTS all empaneled temporary PTS who are otherwise eligible with reference to their age and qualification shall be allowed to participate in the selection process along with other candidates. The management of this proceeding did not consider the candidature of these workmen solely on the ground that they were never working as temporary PTS so as to qualify for consideration. Hence, for deciding this objection the evidence on record need to be scrutinized to find out if these workmen are/were working as temporary PTS in different Branches of the Bank. At the cost of repetition be its stated here that the management Bank in its pleading and evidence has clearly denied the status of the workmen as temporary PTS with explanation that they were working intermittently on daily wage basis.

The claimants examined as WW1 to WW4 have stated under oath that they were working as temporary PTS. To support their stand they have placed reliance in the documents marked as WW1/3. This is a letter addressed to the Assistant Labour Commissioner (Central) New Delhi by the Deputy Zonal Manager, Delhi Zone of Bank of Maharashtra in connection with the claim filed by these workmen before the Labour Commissioner. In the said letter as directed by the Labour Commissioner the Deputy Zonal Manager after checking his records submitted a list of 8 PTS working in different Branches of the Bank. These PTS are none other than the claimants of this proceeding and from the date mentioned against each of them it is evident that they are continuing and working since 2010 in different Branches of the Bank. There is absolutely no evidence on record to accept the contention of the management Bank that these claimants were working intermittently on daily wage basis. This documents stands contrary to the oral evidence adduced by MW1 the AGM of the Bank to the effect that these claimants were not the temporary PTS. Thus, from the evidence both oral and documentary it is proved that the claimants are working with the Bank and continuing since the year 2010 as temporary PTS.

The Ld. Counsel for the claimants also argued that these workmen as an abundant caution has submitted applications for participation in the selection process but the Bank with malafide intention has taken a stand that no application for the claimants was ever received. In this regard he drew the attention to a document filed by the claimants and marked as WW1/4 which is a list of the candidates who submitted application. On behalf of the workmen photocopies of the applications have also been placed on record. The management witness examined as MW1 has stated that for filing up the vacancies of PTS advertisement was published on 12.07.2013 in Danik Bhaskar and the Employment Exchanges in Delhi, U.P. and Haryana were asked to sponsor the name of the candidates. Only Ghaziabad Employment Exchange had sent a list of candidates and from the said list and out of the applications received through advertisement interview was conducted and 18 candidates were selected on merit basis and 12 candidates were kept in waiting list. But the claimants had never submitted application. This oral statement of the witness of the management inspires no confidence since during cross examination she was confronted with the document marked as WW1/4 which is a list of the applications received through paper advertisement for the post of PTS. This document contains the name of all the claimants as the applicants. No explanation has been offered by the management as to why the claimants were not taken under the zone of consideration.

From the documents and oral evidence referred above it is clearly proved that the claimants of this proceeding are working as the temporary PTS in the different Branches of the Bank and their names finds place in the list of temporary PTS maintained in the Zonal office of the Bank.

It is not disputed that a bipartite settlement was made between the Bank and the Bank employees Union on 19.10.1966 pursuant to the recommendation of Desai Award. As per the said settlement (Para 20.12) a 'temporary workman' is he who has been appointed for a limited period of work which is of an essentially temporary nature or who is employed temporarily in the work of permanent nature. As per this settlement the temporary workmen will be given preference while filing up permanent vacancies and if selected they may have to remain under probation. The management Bank perhaps keeping the spirit of bipartite settlement in mind had issued a circular dated 18.02.2008 and a subsequent clarification circular dated 07.09.2009. As per these two circulars the candidates who have worked on temporary basis at Branches and fulfilling the eligibility norms are to be considered for permanent vacancies and allowed to participate in the selection process. But in this case the Bank Management in gross violation of the terms of the Bipartite settlement and its own circulars referred above kept the claimant workman out of the Zone of consideration and took a false plea that they had never applied for the post which stands nullified for the documents placed on record as WW1/3and WW1/4. The Ld. A/R for the management strenuously argued that the present claimants were engaged for intermittent work of the Bank without due process and their candidature cannot be considered for their engagement as permanent PTS. To support his stand he placed reliance in the case of **Secretary State of Karnatak and others vs. Uma Devi and others reported in (2006)4 SCC Page 1.** On behalf of the claimants objection was raised regarding the applicability of the judgment of Uma Devi referred Supra to Industrial Dispute relating to unfair labour practice.

In the case of Uma Devi the Hon'ble Supreme Court have held that the persons who were appointed on temporary and casual basis without following proper procedure cannot claim absorption or regularization since the same is opposed to the policy of public employment. But this is not a case of claiming automatic regularization or absorption. The claimants of this proceeding have ventilated their grievance since they were prevented from participating in the selection procedure describing the same as unfair labour practice.

The effect of the constitution Bench judgment of the Apex Court in the case of Uma Devi came up for consideration with reference to unfair labour practice by the Hon'ble Supreme Court in the case of **Mahrashtra State Road Transport and Another vs. Casteribe Rajya Parivahan Karamchari Sangathan reported in (2009)8 SCC Page 556** wherein the Hon'ble Apex Court came to hold that the judgment in the case of Uma Devi has not over ridden the powers or Industrial and Labour Courts for passing appropriate order, once unfair labour practice on the part of the employer is established. The judgment of Uma Devi does not denude the Industrial and Labour Court of their statutory power.

Now it is to be seen if the claimants of this proceeding were subjected to unfair labour practice or not. **"Unfair Labour Practice"** as defined u/s 2(ra) means any of the practice specified in the 5th Schedule of the ID Act. Under the said 5th Schedule to employ workmen as Badlis, Casual or temporaries and to continue them as such for years with the object of depriving them of the status and privilege of permanent workmen amounts to unfair Labour Practice. In this case the document filed by the workman and marked as WW1/4 clearly indicates that these claimants are working in the different branches of the Bank since the year 2010 and they qualify for consideration to the post of permanent PTS by virtue their age and qualification. The management in utter disregard of law, deprived them from participating in the selection process on a false plea that they are not temporary PTS and no application was submitted by them.

Besides the case of Maharashtra Road Transport referred supra the Hon'ble Supreme Court in the case of **Shri Ajay Pal Singh vs. Haryana Warehousing Corporation decided in Civil Appeal No. 6327 of 2014** disposed of on 09th July 2014 have held that:

> "The provisions of Industrial Disputes Act and the powers of the Industrial and Labour Courts provided therein were not at all under consideration in Umadevi's case. The issue pertaining to unfair labour practice was neither the subject matter for decision nor was it decided in Umadevi's case."

Thus after going through the judgments of Maharashtra Road Transport and Ajay Pal Singh refereed supra it is held that the observation made in the case of Uma Devi has no applicability to the facts of the present case where the workmen have been subjected to Unfair Labour Practice being engaged for work on temporary basis for prolong period. Not only that the Hon'ble High Court of **Jammu and Kashmir in the case of J and K Bank Limited vs. Central Government Industrial Tribunal and Others reported in 2018 LAB I.C. 2970** have held:

> "Unfair Labour Practice-what amounts to-workmen continued in temporary/contractual capacity for years together despite availability of vacant posts, aimed at depriving them of status and privileges of permanent workmen- clearly amounts to unfair labour practice- directions issued by Tribunal to appellant Bank to frame scheme for regularization of respondent workmen within period of 3 months and that respondents workmen would be deemed to have been regularized in case of failure of appellant-Bank to frame scheme, held, justified."

In this case the oral and documentary evidence since proves the continuous service of the workmen for the Bank on temporary basis since the year 2010 the decision of the Bank in not allowing them to participate in the selection process for permanent PTS is held to be illegal and unjustified.

The witness examined on behalf of the management as MW1 has stated that 18 persons have already been appointed against the vacant post of permanent PTS. Though under the scope of the reference this tribunal is to adjudicate about the legality and justifiability of the selection process for the PTS held by the management, the industrial adjudicator under the Industrial Dispute Act enjoys wide power for granting relief which would be proper under a given circumstance. In the case of **Hari Nandan Prasad and Another vs. Employer I/R to Management FCI reported in (2014)7 SCC 190** the Hon'ble Supreme Court have held that the power conferred upon Industrial Tribunal and Labour Court by the Industrial Dispute Act is wide. The Act deals with Industrial Dispute, provides for conciliation, adjudication and settlement and regulates the right of the parties and the enforcement of the awards and the settlement. Thus, the act empowers the adjudicating authority to give relief which may not be permissible in common law or justified under the terms of the contract between the employer and the workman. While referring to the judgment of **Bharat Bank Limited vs. Employees of the Bharat Bank Limited reported in (1950) LLJ 921 Supreme Court** the court came to hold that in setting the dispute between the employer and the workmen the function of the tribunal is not confine to administration of justice in accordance with law. It can confer rights and privileges on either party which it consider reasonable and proper though those may not be within the terms of any existing agreement. It can create new rights and obligations between them which it considers essential for keeping industrial peace.

Here is a case where as indicated above the workmen have been victimized on account of unfair labour practice by the Bank. The posts for which they were aspirants have been filed up as stated by MW1 the AGM of the Bank. Keeping the situation in view it is felt proper to issue a direction to the Bank to frame a scheme for regularization of these workmen within a period of 3 months in the post of permanent PTS which would meet the ends of justice. This direction is specific in respect to the workmen of this claim petition as per the list annexed to the award and passed in exercise of the power conferred on the tribunal to grant any other relief as per the reference received from the Appropriate Government. Hence, ordered.

ORDER

The reference be and the same is answered in favour of the workmen. It is held that the action of the Bank in depriving the workmen from participating in the selection process of PTS was illegal, unjustified and amounts to unfair labour practice since the workmen are working for pretty long period as temporary PTS. The Bank is hereby directed to frame a scheme for regularizing these workmen (as per the list annexed) against the post of permanent PTS of the Bank within 3 months hence and regularize their services. Send a copy of this award to the appropriate government for notification as required under section 17 of the ID act 1947.

List of Workmen

Name of the Employee	Qualification	Working since	Present Branch	Present Status
Bharat Bhushan	7th pass	19.10.2010	Gurgaon main	Still working
Dinesh Kumar	8th Pass	09.07.2011	Palam Vihar	Still working
Ramanand Prajapati	8th Pass	01.07.2009	Sushant lok	Still working
Amit Kumar	7th Pass	17.01.2013	Badsa	Still working
Dheeraj Dhingia	8th Pass	15.04.2013	Delera Chowhan	Still working
Mohit Kumar	8th Pass	03.10.2013	Kirti Nagar	31.03.2014
Kirpa Shanker	8th Pass	01.12.2012	Dwarka	30.06.2013
Mukesh Dhingia	8th pass	10.09.2013	Khurrampur	Still working

The reference is accordingly answered.
Dictated & Corrected by me.

PRANITA MOHANTY, Presiding Officer.

7th August, 2019

नई दिल्ली, 31 अक्तूबर, 2019

का.आ. 1927.—औद्योगिक विवाद अधिनियम 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार बैंक आफ बडौदा के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, चैन्नई के पंचाट (संदर्भ सं. 43/2018) को प्रकाशित करती है जो केन्द्रीय सरकार को 31.10.2019 को प्राप्त हुआ था।

[सं. एल–39025/01/2019–आईआर (बी–II)]

सीमा बंसल, अनुभाग अधिकारी

New Delhi, the 31st October, 2019

S.O. 1927.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 43/2018) of the Cent.Govt.Indus.Tribunal-cum-Labour Court , Chennai as shown in the Annexure, in the industrial dispute between the management of Bank of Baroda,, and their workmen, received by the Central Government on 31.10.2019**.**

[No. L-39025/01/2019-IR(B-II)]

SEEMA BANSAL, Section Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT CHENNAI

ID No. 43/2018

Present: DIPTI MOHAPATRA, LL.M., PRESIDING OFFICER

Date: 24.09.2019

Smt. D. Poovthal
W/o (Late) Duraisamy
No. 198, Puliampatti Road
Periyar Nagar, Nambiyur
Erode-638458 : 1st Party/Petitioner

AND

1. The Branch Manager
   Bank of Baroda, Erode Branch
   Erode District : Respondent

2. The Dy. General Manager
   Bank of Baroda, Regional Office
   Coimbatore : Respondent

3. The General Manager
   (Tamilnadu and Kerala Zone)
   Zonal Office, Mylapore
   Chennai : Respondent

Appearance:

For the 1st Party/Petitioner : Advocate Sri S.P. Srinivasan & Associates

For the 2nd Party/Respondents : Advocates M/s T.S. Gopalan & Co

AWARD

This is an Application under 2A(2) of the Industrial Dispute Act.

The Applicant's case in brief is that she joined in the month of August 1996 under the Respondent at Nambiyur Branch as sweeper cum sub staff and continued till 2010 and transferred to newly opened Branch at Gobichettipalayam in the

year2011 and again transferred to Nambiyur Branch and worked as Peon cum sub-staff while the matter stood thus she was orally terminated on 18.12.2014 from her job without any prior notice..

2. Being aggrieved with the order he made a Representation on 06.012015. to the then Branch Manager who assured him to send the representation to the Regional Office, Coimbatore. No action was taken on his representation nor he was reinstated. He approached the Hon'ble High Court vide Writ Petition No. 39279/2015 which was disposed on 20.07.2017, granting liberty to the Petitioner to approach the appropriate Authority in this regard . The petitioner accordingly once again approached the Respondent but invain. She approached the Conciliation Officer, Coimbatore. Since there was no Officer, her matter in issue was taken up by the Conciliation Officer, Madurai (Incharge) vide file number7/17/2017. The dispute could not be resolved before the Conciliation Officer, hence the conciliation ended in failure. However, the Conciliation Officer issued a Certificate to the effect enabling the petitioner to approach this Forum of Industrial Tribunal for redressal of his grievance. The Applicant accordingly filed the Application under 2A(2) challenging the termination order dtd. 18.12.2014 of the Respondent.

3. The Respondent entered appearance by filing its Counter that when the rule of limitation is prescribed for approaching the judicial Forum the same will automatically operate irrespective of whatever circumstances in which the delay was caused. The Respondent strenuously raised objection on the issue of Admission on the point of Limitation. Reliance is placed in the case of WP (MD) No. 4269/2017 in the case of ***RAVI KUMAR VS. TAMIL NADU STATE TRANSPORT CORPORATION 2017 SCC MAD 20409*** and in WP(MD) No. 15552/2015 in the case of ***PRINCE PACKIANATHAN VS. THE GENERAL MANAGER, TAMIL NADU TRANSPORT CORPORATION, NAGERCOIL***.

4. Pending disposal of Admission of the ID case, the Counsel for the Applicant moves the petition for withdrawal of the Application where he does not dispute the issues raised on the point of limitation for admission of the 2A(2) Application. It is contended that the petitioner has not approached the Industrial Tribunal directly but on being granted with liberty by the Hon'ble High Court in Writ Petition No. 39279/2015 dtd. 20.07.2017, approached the conciliation Authority within the period of 3 years from the date of the alleged termination. When the dispute was not resolved before the Conciliation Officer, on being issued with the Certificate by the Conciliation Officer, the Petitioner/Applicant approached this Forum under 2A(2). Admittedly, the certificate issued by RLC (which is enclosed with the Application) discloses that the mandatory stipulated period of 45 days (in view of 2A(2)) from the date of raising the dispute before the RLC expires on 26.10.2017. As such, the Petitioner was at liberty to approach this Forum before expiry of 3 years (in view of 2A(3) of the amended provision of the Act) from the date of the alleged termination i.e. 18.12.2014. But the Applicant approached this Forum on 14.09.2018 which is not within the period of 3 years, but almost 9 months more than the stipulated period of 3 years.

The Learned Counsel for the Applicant-Petitioner advances his submission expressing the Petitioner's desire to approach the appropriate Conciliation Authority once again to try his luck. It is further submitted in case of failure to resolve the dispute, the Conciliation Officer may move the appropriate Government for further follow-up action and if there exists any Industrial Dispute, the appropriate Government may refer the dispute to the Industrial Tribunal for adjudication under 10(1)(d) of the ID Act. The Learned Counsel emphasizes the Applicant-Petitioner may have a fair chance to contest the dispute under the Act, hence prays for withdrawal of the Application.

5. In view of the submission of the Learned Counsel for both parties and discussion held in preceding paragraphs, there is no legal impediment to allow the Applicant for withdrawal of the Application. The Withdrawal Petition is accordingly allowed.

In the result the ID 43/2018 is disposed of.

(Dictated and transcribed by PA and corrected and pronounced in the open court on this day the 24th Sept., 2019)

DIPTI MOHAPATRA, Presiding Officer

नई दिल्ली, 31 अक्तूबर, 2019

का.आ. 1928.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार बैंक आफ बड़ौदा के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, चैन्नई के पंचाट (संदर्भ सं. 45/2018) को प्रकाशित करती है जो केन्द्रीय सरकार को 31.10.2019 को प्राप्त हुआ था।

[सं. एल–39025/01/2019–आईआर (बी–II)]

सीमा बंसल, अनुभाग अधिकारी

New Delhi, the 31st October, 2019

S.O. 1928.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 45/2018) of the Cent.Govt.Indus.Tribunal-cum-Labour Court , Chennai as shown in the Annexure, in the industrial dispute between the management of Bank of Baroda,, and their workmen, received by the Central Government on 31.10.2019.

[No. L-39025/01/2019-IR(B-II)]

SEEMA BANSAL, Section Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT CHENNAI

ID No. 45/2018

Present: DIPTI MOHAPATRA, LL.M., PRESIDING OFFICER

Date: 30.09.2019

Smt. R. Lakshmi
W/o Late R. Ravikumar
No. 36, Lakshmipuram
Rayapalayampudur, Chitode
Erode-638116 : 1st Party/Petitioner

AND

1. The Branch Manager
   Bank of Baroda, Erode Branch
   Erode District : Respondent

2. The Dy. General Manager
   Bank of Baroda, Regional Office
   No. 82, Bank Road, 3rd Floor
   Coimbatore : Respondent

3. The General Manager
   (Tamilnadu and Kerala Zone)
   Zonal Office, Mylapore
   Chennai : Respondent

Appearance:

For the 1st Party/Petitioner : Advocate Sri S.P. Srinivasan & Associates

For the 2nd Party/Respondents : Advocates M/s. T.S. Gopalan & Co.

AWARD

This is an Application under 2A(2) of the Industrial Dispute Act.

The Applicant's case in brief is that she joined on 17.11.2007 as Sweeper-cum-Substaff under the Respondent and continued as such. While the matter she was orally terminated from her job by the Respondent on 18.12.2014, without any prior notice.

2. Being aggrieved with the order she made a representation on 17.03.2015 to the then Branch Manager who assured him to send the representation to the Regional Office, Coimbatore. No action was taken on his representation nor he was reinstated. He approached the Hon'ble High Court vide Writ Petition No. 38445/2015 which was disposed on 20.07.2017, granting liberty to the petitioner to approach the appropriate authority in this regard. The petitioner accordingly once again approached the Respondent but invain. He approached the Conciliation Officer, Coimbatore. Since there was no Officer, his matter in issue was taken up by the Conciliation Officer, Madurai (Incharge) vide file no. 7/22/2017-RM. The dispute could not be resolved before the Conciliation Officer, hence the conciliation ended in failure. However, the Conciliation Officer issued a Certificate to the effect enabling the petitioner to approach this Forum of Industrial Tribunal for redressal of his grievance. The Applicant accordingly filed the Application under 2A(2) challenging the termination order dtd. 18.12.2014 of the Respondent.

3. The Respondent entered appearance by filing its Counter that when the rule of limitation is prescribed for approaching the judicial Forum the same will automatically operate irrespective of whatever circumstances in which the delay was caused. The Respondent strenuously raised objection on the issue of Admission on the point of Limitation. Reliance is placed in the case of WP(MD) No. 4269/2017 in the case of ***RAVI KUMAR VS. TAMIL NADU STATE TRANSPORT CORPORATION 2017 SCC MAD 20409*** and in WP(MD) No. 15552/2015 in the case of ***PRINCE PACKIANATHAN VS. THE GENERAL MANAGER, TAMIL NADU TRANSPORT CORPORATION, NAGERCOIL***.

4. Pending disposal of Admission of the ID case, the Counsel for the Applicant moves the petition for withdrawal of the Application where he does not dispute the issues raised on the point of limitation for admission of the 2A(2) Application. It is contended that the petitioner has not approached the Industrial Tribunal directly but on being granted with liberty by the Hon'ble High Court in Writ Petition No. 38445/2015 dtd. 20.07.2017, approached the conciliation proceeding within the period of 3 years from the date of termination.

When the dispute was not resolved before the Conciliation Officer, on being issued with the Certificate by the Conciliation Officer, the petitioner/applicant approached this Forum under 2A(2). Admittedly, the certificate issued by RLC (which is enclosed with the Application) discloses that the mandatory stipulated period of 45 days (in view of 2A(2)) from the date of raising the dispute before the RLC expires on 26.10.2017. As such, the petitioner was at liberty to approach this Forum before expiry of 3 years (in view of 2A(3) of the amended provision of the Act) from the date of the alleged termination i.e. 18.12.2014. But the Applicant approached this Forum on 14.09.2018 which is not within the period of 3 years, but almost 9 months more than the stipulated period of 3 years.

The Learned Counsel for the Applicant-Petitioner advances his submission expressing the Petitioner's desire to approach the appropriate Conciliation Authority once again to try his luck. It is further submitted in case of failure to resolve the dispute, the Conciliation Officer may move the appropriate Government for further follow-up action and if there exists any Industrial Dispute, the appropriate Government may refer the dispute to the Industrial Tribunal for adjudication under 10(1)(d) of the ID Act. The Learned Counsel emphasizes the Applicant-Petitioner may have a fair chance to contest the dispute under the Act, hence prays for withdrawal of the Application.

5. In view of the submission of the Learned Counsel for both parties and discussion held in preceding paragraphs, there is no legal impediment to allow the Applicant for withdrawal of the Application. The Withdrawal Petition is accordingly allowed.

In the result the ID 45/2018 is disposed of.

(Dictated and transcribed by PA and corrected and pronounced in the open court on this day the 30th Sept., 2019)

DIPTI MOHAPATRA, Presiding Officer

नई दिल्ली, 31 अक्तूबर, 2019

का.आ. 1929.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार बैंक आफ बडौदा के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, चैन्नई के पंचाट (संदर्भ सं. 44/2018) को प्रकाशित करती है जो केन्द्रीय सरकार को 31.10.2019 को प्राप्त हुआ था।

[सं. एल–39025/01/2019–आईआर (बी–II)]

सीमा बंसल, अनुभाग अधिकारी

New Delhi, the 31st October, 2019

S.O. 1929.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 44/2018) of the Cent.Govt.Indus.Tribunal-cum-Labour Court , Chennai as shown in the Annexure, in the industrial dispute between the management of Bank of Baroda,, and their workmen, received by the Central Government on 31.10.2019.

[No. L-39025/01/2019-IR(B-II)]

SEEMA BANSAL, Section Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL- CUM - LABOUR COURT CHENNAI

ID No. 44/2018

Present: DIPTI MOHAPATRA, LL.M., PRESIDING OFFICER

Date: 24.09.2019

Sri C. Moorthi
S/o Chinnan
No. 2/77, Vavikkadai Vel Nagar, Thiruvachi
Pichandampalayam
Perundurai, Erode District-638052 : 1st Party/Petitioner

AND

1. The Branch Manager
Bank of Baroda, Erode Branch
Erode District : Respondent

2. The Dy. General Manager
Bank of Baroda, Regional Office
No. 82, Bank Road, 3rd Floor
Coimbatore : Respondent

3. The General Manager
(Tamilnadu and Kerala Zone)
Zonal Office, Mylapore
Chennai : Respondent

Appearance:

For the 1st Party/Petitioner : Advocate Sri S.P. Srinivasan & Associates

For the 2nd Party/Respondents : Advocates M/s. T.S. Gopalan & Co.

AWARD

This is an Application under 2A(2) of the Industrial Dispute Act.

The Applicant's case in brief is that he joined on 03.08.2002 as Sub-Staff at Perundurai Branch and continued as such till 31.03.2007. Thereafter he was not employed due to artificial break but from 01.04.2009 till 18.12.2004 the petitioner worked as Sub-Staff in Erode Branch. While the matter stood thus, without any notice he was orally terminated from service from 18.12.2014.

2. Being aggrieved with the order he made a representation on 17.03.2015 to the then Branch Manager who assured him to send the representation to the Regional Office, Coimbatore. No action was taken on his representation nor he was reinstated. He approached the Hon'ble High Court vide Writ Petition No. 38443/2015 which was disposed on 20.07.2017, granting liberty to the petitioner to approach the appropriate authority in this regard. The petitioner accordingly once again approached the Respondent but invain. He approached the Conciliation Officer, Coimbatore. Since there was no Officer, his matter in issue was taken up by the Conciliation Officer, Madurai (Incharge) vide file no. 7/20/2017-RM. The dispute could not be resolved before the Conciliation Officer, hence the conciliation ended in failure. However, the Conciliation Officer issued a Certificate to the effect enabling the petitioner to approach this Forum of Industrial Tribunal for redressal of his grievance. The Applicant accordingly filed the Application under 2A(2) challenging the termination order dtd. 18.12.2014 of the Respondent.

3. The Respondent entered appearance by filing its Counter that when the rule of limitation is prescribed for approaching the judicial Forum the same will automatically operate irrespective of whatever circumstances in which the delay was caused. The Respondent strenuously raised objection on the issue of Admission on the point of Limitation. Reliance is placed in the case of WP(MD) No. 4269/2017 in the case of ***RAVI KUMAR VS. TAMIL NADU STATE TRANSPORT CORPORATION 2017 SCC MAD 20409*** and in WP(MD) No. 15552/2015 in the case of ***PRINCE PACKIANATHAN VS. THE GENERAL MANAGER, TAMIL NADU TRANSPORT CORPORATION, NAGERCOIL***.

4. Pending disposal of Admission of the ID case, the Counsel for the Applicant moves the petition for withdrawal of the Application where he does not dispute the issues raised on the point of limitation for admission of the 2A(2) Application. It is contended that the petitioner has not approached the Industrial Tribunal directly but on being granted with liberty by the Hon'ble High Court in Writ Petition No. 38443/2015 dtd. 20.07.2017, approached the conciliation proceeding within the period of 3 years from the date of termination. When the dispute was not resolved before the Conciliation Officer, on being issued with the Certificate by the Conciliation Officer, the petitioner/applicant approached this Forum under 2A(2). Admittedly, the certificate issued by RLC (which is enclosed with the Application) discloses that the mandatory stipulated period of 45 days (in view of 2A(2)) from the date of raising the dispute before the RLC expires on 26.10.2017. As such, the petitioner was at liberty to approach this Forum before expiry of 3 years (in view of 2A(3) of the amended provision of the Act) from the date of the alleged termination i.e. 18.12.2014. But the Applicant approached this Forum on 14.09.2018 which is not within the period of 3 years, but almost 9 months more than the stipulated period of 3 years.

The Learned Counsel for the Applicant-Petitioner advances his submission expressing the Petitioner's desire to approach the appropriate Conciliation Authority once again to try his luck. It is further submitted in case of failure to resolve the dispute, the Conciliation Officer may move the appropriate Government for further follow-up action and if there exists any Industrial Dispute, the appropriate Government may refer the dispute to the Industrial Tribunal for adjudication under 10(1)(d) of the ID Act. The Learned Counsel emphasizes the Applicant-Petitioner may have a fair chance to contest the dispute under the Act, hence prays for withdrawal of the Application.

5. In view of the submission of the Learned Counsel for both parties and discussion held in preceding paragraphs, there is no legal impediment to allow the Applicant for withdrawal of the Application. The Withdrawal Petition is accordingly allowed.

In the result the ID 44/2018 is disposed of.

(Dictated and transcribed by PA and corrected and pronounced in the open court on this day the 24th Sept., 2019)

DIPTI MOHAPATRA, Presiding Officer

नई दिल्ली, 31 अक्तूबर, 2019

का.आ. 1930.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार सैन्ट्रल बैंक आफ इंडिया के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय नं. 2, चण्डीगढ़ के पंचाट (संदर्भ सं. 310/2013) को प्रकाशित करती है जो केन्द्रीय सरकार को 31.10.2019 को प्राप्त हुआ था।

[सं. एल–12012/92/2013–आईआर (बी–II)]

सीमा बंसल, अनुभाग अधिकारी

New Delhi, the 31st October, 2019

S.O. 1930.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 310/2013) of the Cent.Govt.Indus.Tribunal-cum-Labour Court No 2, Chandigarh as shown in the Annexure, in the industrial dispute between the management of Central Bank of India,, and their workmen, received by the Central Government on 31.10.2019.

[No. L-12012/92/2013-IR(B-II)]

SEEMA BANSAL, Section Officer

ANNEXURE

IN THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT-II, CHANDIGARH

Present: Sh. A.K. Singh, Presiding Officer

ID No. 310/2013

Registered on:-07.01.2014

Ashok Kumar Atwal, Daftri, B/o Badopal, R/o H.No.220,
Valmiki Nagar, Thandi Sarak, Hissar. …Workman

Versus

1. Central Bank of India, Zonal Office, Sector 17-B, Chandigarh through its Zonal Manager.
2. Central Bank of India, Regional Office, Jawahar Market,
Model Town, Rohtak (Hy.), through its Regional Manager. Management

AWARD
Passed on:-01.10.2019

Central Government vide Notification No. L-12012/92/2013-IR(B-II) Dated 16.12.2013, under clause (d) of sub-section (1) and sub-section (2A) of Section 10 of the Industrial Disputes Act, 1947(hereinafter called the Act), has referred the following Industrial dispute for adjudication to this Tribunal:-

> **"Whether the action of the management of the Regional Manager, Central Bank of India, Regional Office, Rohtak(Haryana) in awarding the punishment of discharged from service with superannuation to Sh. Ashok Kumar Atwal Ex-Daftary w.e.f. 19.03.2008 vide their non-speaking order dated 19.03.2008 is just, proper, legal and justified? What relief the workman is entitled to?"**

1. Both the parties were served with notices. The workman/claimant Ashok Kumar Atwal has filed his statement of claim with the averment that he was duly selected and appointed as Daftri on 01.03.1988 and his services have been illegally terminated vide order dated 19.03.2008 having completed more than 20 years of services. The workman was illegally charge-sheeted as per charge-sheet dated 28.05.2007 on the allegation that he remained absent on various times w.e.f. 01.03.1988 to 10.03.2007 total 601 days. The charge-sheet was misconceived because alleged absence before 30.12.2006 has been duly explained and settled. As regards absence from 2006 and thereafter workman was not well and had submitted an application for leave along with medical certificate which is Annexure W-1 to Annexure W-15 with the claim statement. The workman was put under regular enquiry without passing any order on his reply and enquiry officer submitted his report against the workman without giving any reasoning in support of his conclusion. Consequently, the workman was discharged from service vide order dated 19.03.2008 with pension benefits, PF and gratuity etc. but till date workman has not been given these benefits. The appeal preferred by the workman is dismissed as per order dated 13.06.2008 by a non-speaking order without considering the grounds in the appeal. The enquiry officer has not given any opportunity to lead the defence evidence as well as to examine more witnesses in support of his defence. There is

nothing to prove that absence was willful therefore, findings are perverse and whole proceeding deserves to be set aside. The order or punishment dated 19.03.2008 and order of appellate-authority dated 13.06.2008 are illegal, being against the rule, arbitrary and against the law of natural justice therefore, the same deserves to be set aside.

2. Respondent/management has filed its written statement, alleging therein that the reference is not maintainable being without jurisdiction as the workman had indulged in misconduct under the Bipartite Settlement as applicable to the employees of the respondent-bank. The workman remained absent from duty for long time resulting issuance of memo dated 11.08.2006 to explain his position within a period of 7 days. Subsequently, memo dated 02.01.200711.08.2006 were duly issued, mentioning the total absence period of workman upto 31.12.2006 as 532 days. In response to the letter dated 02.01.2007, workman send reply mentioning his health problem but despite various memos, the workman did not mend his ways. Therefore, again the memo dated 12.03.2007 was issued to the workman for his unauthorized absence for 69 days from 01.01.2007 to 10.03.2007. The reply submitted by the workman found to be unsatisfactory, resulting issuing of charge-sheet dated 28.05.2007 and corrigendum dated 18.06.2007, duly received by the workman on 08.06.2007 and 21.06.2007 respectively. Since reply submitted by the workman was not satisfactory, Enquiry Officer R.S. Dahiya, Senior Manager, Central Bank of India, appointed as enquiry officer. On 13.07.2007, workman requested for adjourning the enquiry proceedings. List of documents and witnesses was supplied by the bank's-presenting officer to the workman who cross-examined the witnesses of the management. Due to several absence of the workman and lastly on 09.10.2007, final notice was issued to the workman and the enquiry proceedings was fixed on 18.10.2007 but workman did not turn up for participating in the enquiry proceedings dated 25.10.2007. After examining the witnesses, the enquiry officer advised the workman to produce witnesses and documents but, no witness was produced by the workman in his defence except documents after conclusion of the evidence. Hence, workman as well as witness of the management and receiving written briefs by both the parties, the enquiry officer submitted his report to the disciplinary authority holding all the charges fully proved against the workman. The disciplinary authority after giving notice along with enquiry report gave an opportunity to the workman for submission of his comments but he did not submit his comment against the enquiry findings. After hearing the workman, disciplinary authority considering the whole record of the case confirmed the proposed punishment of discharge from service of the bank with superannuatory benefits vide order dated 19.03.2008 which was later confirmed by the appellate-authority after giving due opportunity to the workman from the speaking order dated 13.06.2008. It is further alleged that the impugned order is passed in accordance with the law and after giving reasonable opportunity of enquiry and hearing to the workman as such, it deserves to be dismissed with exemplary cost in the interest of justice, equity and fair play.

3. Workman submitted his evidence through affidavit on 12.08.2015 after that he remained absent on several times, forcing the Tribunal to warn the workman to adduce evidence. The Tribunal vide order dated 08.05.2019 again given opportunity to the workman to make his presence for cross-examination but he again remained absent on 10.07.2019. Hence, this Tribunal was forced to close the opportunity of the workman with the observation that affidavit filed by the workman shall not be read in evidence as management has not got any opportunity to cross-examine the witness. The case is further fixed for 14.08.2019 but again none present for workman and submission of the management for not adducing any evidence is accepted by the Tribunal and the case is fixed for 04.09.2019 for arguments.

4. Heard the argument of learned counsel of the management in the absence of workman and his counsel and perused the file.

5. Perusal of the file reveals that there is no dispute that workman was Daftri in the management-bank and appointed as Daftri on 01.03.1988 when his services were terminated as per order dated 19.03.2008 due to his regular absence without any information, which was challenged by the workman resulting this reference from the Government of India/Bharat Sarkar, Ministry of Labour/Shram Mantralaya, vide Notification dated 16.12.2013.

6. Undoubtedly, this is a case of absence of workman from service without information, amounting to misconduct under Bipartite Settlement. The workman has raised many contentions regarding his illegal retrenchment along with mode of enquiry conducted by the enquiry officer but nothing is proved by the workman through oral or documentary evidence except the relations of employer and employee between the workman and management which is in fact not disputed between the parties. The workman has submitted his affidavit in support of the facts alleged in the claim petition but in spite of the opportunity, he did not ensure his presence before the Tribunal to be cross-examined by the management as such, legally speaking, the evidence submitted by the workman has no force in the eye of law and it will be not read in evidence resulting the case of no evidence.

7. Having gone through the factual and legal proposition, I am of the view that claimant is not entitled for any relief and the claim petition is liable to be dismissed and the reference is answered accordingly.

8. Let copy of the award be sent to the Central Government for publication as required under Section 17 of the Act.

A. K. SINGH, Presiding Officer

नई दिल्ली, 31 अक्तूबर, 2019

का.आ. 1931.—औद्योगिक विवाद अधिनियम 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार ओरियण्टल बैंक आफ कामर्स के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय नं. 2, चण्डीगढ़ के पंचाट (संदर्भ सं. 2/2017) को प्रकाशित करती है जो केन्द्रीय सरकार को 31.10.2019 को प्राप्त हुआ था।

[सं. एल–12012/20/2004–आईआर (बी–II)]

सीमा बंसल, अनुभाग अधिकारी

New Delhi, the 31st October, 2019

S.O. 1931.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 2/2017) of the Cent.Govt.Indus.Tribunal-cum-Labour Court No 2, Chandigarh as shown in the Annexure, in the industrial dispute between the management of Oriental Bank of Commerce, and their workmen, received by the Central Government on 31.10.2019.

[No. L-12012/20/2004-IR(B-II)]

SEEMA BANSAL, Section Officer

ANNEXURE

IN THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT-II, CHANDIGARH

Present: Sh. A.K. Singh, Presiding Officer

ID No. 2/2017

Registered on:-15.05.2017

Didar Singh S/o Chiman Singh R/o H.No.20,
Block-C, S.S.T. Complex, Patiala. …Workman

Versus

Regional Manager, Oriental Bank of Commerce,
Chhoti Baradari, The Mall Road, Patiala. … Management

AWARD
Passed on:-09.10.2019

Central Government vide Notification No. L-12012/20/2004-IR(B-II) Dated 05.05.2017, under clause (d) of sub-section (1) and sub-section (2A) of Section 10 of the Industrial Disputes Act, 1947(hereinafter called the Act), has referred the following Industrial dispute for adjudication to this Tribunal:-

> **"Whether the action of the management of Oriental Bank of Commerce in terminating the services of workman Shri Didar Singh S/o Sh. Chiman Singh with effect from 14.07.1994 is legal, fair and justified? If not, what relief the workman is entitled to and from which date?"**

1. Both the parties were served with notices. The workman Didar Singh appeared and filed his statement of claim, alleging therein that he was appointed as Clerk-cum-Cashier by the respondent on 07.10.1991 vide Annexure-A and submitted his joining report vide Annexure-B attached with the claim petition. Claimant/workman was performing the duty in respondent continuously from 07.10.1991 to 13.07.1994 but his services were illegally terminated on 14.07.1994 without any charge-sheet, suspension allowance without any fair and proper enquiry and show cause notice, violating the provisions of Central Civil Service Rules as well as guidelines of Reserve Bank of India. The workman had never written his resignation letter with his own handwriting nor submitted it in the presence of his father, who is well conversed with the Urdu language and used to sign in Urdu language. Father of the workman/claimant had opened his account in Punjab & Sind Bank, Branch Office Dhaneta, Distt. Patiala on 09.01.2002 and signed the form of opening account in Urdu language, copy of which is filed as Annexure-C. Management has made new appointment after the termination of the workman and retained juniors in violation of Section 25-F, 25-G and 25-H of the Industrial Disputes Act, 1947. The alleged resignation was taken under coercion which is not a valid resignation in the eye of law. The claimant/workman was made to sign certain blank papers and on that resignation letter of the workman was manufactured by the respondent and the father of the claimant was made witness to the resignation letter. Claimant/workman has preferred a Civil Suit in Civil Court, Patiala, which has no jurisdiction, and was dismissed on 24.08.2000. An appeal preferred by the claimant/workman also dismissed by the District Judge on 12.11.2001. The regular second appeal, which was registered

as RSA 3479/2003, before the Hon'ble Punjab & Haryana High Court. The workman had also filed an application dated 31.07.2003 for seeking withdrawal of the appeal on the ground that respondent-bank had itself pleaded that the dispute raised relates to the Industrial Law as such, claimant should approach to the Industrial Court. The Hon'ble Punjab & Haryana High Court permitted to the claimant/workman to withdraw the appeal and also granted the liberty prayed for by the claimant. The claimant/workman had challenged the termination order and submitted the demand notice which had been illegally rejected by the Government of India. The claimant/workman again approached the appropriate authority and during the entire period, he had not delayed the matter. Moreover, Limitation Act is not applicable as the case is pertaining to the Industrial Dispute Act 1947. The plea of res judicata will not applicable as a Civil Court has no jurisdiction to hear the suit against the dismissal as per the judgment of Hon'ble Supreme Court of India. The management had not paid any suspension allowance to the claimant during the suspension period. The claimant/workman was never involved in any embezzlement of money and never confessed in written nor submitted any affidavit in this regard. The management has violated the principle of natural justice in terminating the services of the claimant/workman without any show cause notice and without hearing the claimant/workman. The claimant/workman has remained unemployed from the date of his termination and is entitled to continuity of service with full back wages in revised grade and scale along with arrears from 14.07.1994 along with interest @ 24% per annum from the respondent-bank.

2. Respondent/management has filed its written statement, alleging therein that claimant/workman has not approached to the Hon'ble Tribunal with clean hands and has suppressed true and material facts as such, claim petition deserves to be dismissed on the ground alone. The claim petition is barred by the principle of res judicata. In fact, the claimant/workman has committed serious irregularities while he was working and he was suspended on 30.06.1994 for having embezzlement of money deposited by the customer for which he has apologized and in order to avoid stigma on his part and disciplinary action initiated against him, he submitted his resignation voluntarily from the job on 14.07.1994 in the presence of his father and Assistant Regional Manager Sh. M.C. Malik. Resignation of the workman was duly accepted by the bank and the same was conveyed to the workman vide letter dated 26.07.1994. The workman has also submitted an affidavit dated 02.08.1994 which are Annexure R-1 to R-3 respectively. The claimant/workman had submitted one letter dated 31.08.1994, accepting the submission of his resignation besides the embezzlement of amount etc. copy of which is appended as Annexure R-4. The claimant/workman has preferred a Civil Suit on 08.02.1995, titled as Didar Singh Vs. Oriental Bank of Commerce, before the learned Civil Court, Patiala, which was dismissed by the learned Court on 24.08.2000. The appeal preferred by the workman/claimant against the above judgment dated 24.08.2000 was dismissed by the learned Court of Additional District Judge, Patiala, vide its judgment dated 12.11.2001. Thereafter, the petitioner filed a second regular appeal before the Hon'ble Punjab & Haryana High Court at Chandigarh, which was dismissed by the Hon'ble Court on 31.07.2003 as withdrawn. The workman after availing the civil remedy before the Hon'ble High Court raised the demand notice before the Assistant Labour Commissioner(Central), Chandigarh, which was duly replied by the respondent-bank and said demand notice was also rejected by the Ministry of Labour & Employment. New Delhi. Claimant further challenged the Order of Ministry of Labour and Employment before Hon'ble Punjab & Haryana High Court in civil writ petition, which was subsequently withdrawn by the claimant on 03.07.2015. The claimant/workman has preferred this petition without any cause of action as such, claim petition deserves to be dismissed. The petition is barred by principle of estoppell as he voluntarily has submitted his resignation from service. Management submitted that claimant/workman has worked with the respondent-bank only up to 30.06.1994, the date on which he was suspended by the management. In fact the services of the claimant/workman were never terminated what to say illegal termination because he himself has voluntarily submitted his resignation which was duly accepted by the management-bank. The facts alleged in Para 3 and 8 of the claim petition is self-contradictory as such, he is not entitled to any relief claimed in the petition.

3. The workman has filed its replication to the written statement filed by the respondent-bank, alleging therein that plea of res judicate is not applicable in the case. Rest of the facts are same which are already alleged in the claim petition as such, it does not required to be repeated again.

4. Workman Didar Singh has filed his affidavit Ex.AW1/A along with documents Ex.A-1 to A-8 which is part of his evidence. The facts alleged in the cross-examination shall be discussed later in the judgment as per requirement.

5. The respondent/management has submitted affidavit of Chief Manager Vinay Dadwal, which is Ex.MW1/A along with documents Ex.R1 to R4, in support of his defence raised in the written statement. Witness Vinay Dadwal has submitted that he did not work in the regional office at Patiala. The Deputy General Manager has appointed the workman, who was suspended on 30.06.1994. He has submitted that he do not know Chiman Singh personally and facts relating to the account in the bank of Oriental Bank of Commerce. He has accepted that in his presence no signatures were made on letter dated 14.07.1994. He has denied the suggestion that workman had never resigned from his job.

6. I have heard Sh. Ramjeet, Ld. Counsel for the workman and Sh. Kumar Nikshep, Ld. Counsel for the management and have carefully gone through the evidence led by both the parties and given thoughtful consideration raised by the learned counsels during the course of arguments.

7. Learned counsel of the workman Sh. Ramjeet has contended that Civil Court, Patiala has no jurisdiction and the matter was in fact of an industrial dispute hence, plea of res judicata and estoppell is not applicable between the parties. Claimant/workman was suspended on 30.06.1994 by the Regional Manager, Oriental Bank of Commerce, Patiala and he was restrained to enter in the bank-premises, Bhawanigarh, or leave the station without permission of the Manager. The workman was appointed by the Deputy General Manager, Oriental Bank of Commerce, while he was suspended by the lower-authority, which is illegal in the eye of law. As per rules an officer shall not leave or discontinue without giving in writing to leave or discontinue his service for resign. The period of notice required three months time which has to be submitted before the authority. Respondent has violated Chapter IV of Regulation 20(2) of the Oriental Bank of Commerce, Officers Employees(Discipline & Appeal) Regulation, 1982. It is further argued that during the pendency of the disciplinary action, an employee shall not resign without proper approval in writing of competent authority. It is further argued that respondent-bank has produced concocted and forged documents by preparing on the blank paper signed by the workman thereto for security purpose. The services of the claimant/workman were illegally terminated without any charge-sheet, notice by the appointing authority. The learned counsel argued that Limitation Act is not applicable under the Industrial Disputes Act, 1947 and claim is maintainable before the Tribunal.

8. Learned counsel of the management argued in the line of the facts alleged in the written arguments that petitioner/workman has not approached to the Tribunal with clean hands and has suppressed true and material facts thus, claim petition deserves to be dismissed on this ground alone. Learned counsel further argued that reference is barred by principles of limitation as well as principle of res-judicate as matter has been heard and finally decided by the Civil Court. Learned counsel further argued that petitioner has committed serious irregularities while working and he was suspended on 30.06.1994 for having embezzled money deposited by the customers and to avoid stigma on his part and disciplinary action had been initiated against him, he has submitted his resignation voluntarily. The factum of using undue force is altogether untrue and has averred to make the genuine resignation as fabricated and manufactured. Learned counsel further argued that after availing the civil remedy before the Hon'ble High Court, the petitioner has raised a demand notice before the Assistant Labour Commissioner, which was rejected by the Ministry of Labour and Employment. It is further argued that this petition has been filed by the workman without cause of action and barred by the principle of estopple. Learned counsel further argued that respondent-bank never violated the principles of natural justice or provisions of Industrial Disputes Act. Learned counsel has placed reliance in the case of ***General Manager, Punjab Roadways & anr. Vs. Amrik Singh and another 2013(2) CLR 760 Pb&Hr.***

9. Before entering into critical analysis of evidence and case laws applicable thereto, it is pertinent to mention those facts which are either admitted between the parties or not controverted. The relation of employer and employee, date of joining, date of alleged termination(acceptance of resignation letter) are not disputed between the parties. Similarly, first round of civil litigation upto Hon'ble Punjab & Haryana High Court, dismissal of suit filed by the workman for declaration of termination as null and void by trial court as well as First Appellate Court and dismissal of suit and first appeal preferred by the workman is also not disputed. There is no dispute that R.S.A. preferred by the workman against the order of First Appellate Court/Additional District Judge, Patiala and its withdrawal by the workman from Hon'ble Punjab & Haryana High Court with permission to seek remedy before Industrial Tribunal in accordance with law, is also not disputed between the workman and Bank-management. It is also not disputed that Bank-management has not issue any show cause notice or charge sheet to the workman and no departmental enquiry initiated by the management, asserting that this is not a case of termination instead a case of acceptance of voluntarily resignation of workman.

10. The real bone of contention between the workman and management-bank relates to the resignation/termination of the workman. But it can be straightaway observed that the workman has suppressed the origin and genesis of the dispute resulting so many questions which are unanswered from the evidence on record. **What was reason for tendering resignation, whether voluntarily or forcefully? Why he remained absent in the months of May and June 1994? Why he did not challenged the suspension order or acceptance of resignation by bank-authority in spite of the knowledge of acceptance in writing? Why he did not make any representation or complaint in writing to bank higher authority instantly or why did not initiate legal proceeding forthwith?** These are the pertinent questions which requires reasonable and satisfactory answer from the workman. As argued by the learned counsel of the bank in fact, reference is defective to the extent that it requires finding about the termination of service where as nothing is on record pertaining to termination dated 14.07.1994 in the form of documentary evidence. Furthermore, there is nothing in pleading or evidence of workman about oral termination. Letter issued by the management on 26.07.1994 is the acceptance of resignation in pursuance of resignation letter dated 14.07.1994 alleged to be executed by the workman in presence of his father and bank official M.C. Malik. However, the real dispute lies about the resignation letter dated 14.07.1994. It is pertinent to mention that pleading and evidence of the workman is ambiguous and self-contradictory. As per paragraph 8 of claim petition, the resignation letter dated 14.07.1994 was taken under coercion while in para 9 of the claim petition, it is alleged that management forced the workman to sign certain blank papers and on that blank papers, resignation letter of the workman was manufactured by the respondent. Natural question arises that if management have got resignation letter under coercion then what was need to get the blank papers signed by workman.

Furthermore, if the resignation letter Ex.R-3 is prepared by the respondent-bank on blank paper having signature of workman why the workman has denied his signature on the resignation letter which is on record. Reason best know to workman but his conduct of denial and contradictory pleading and affidavit submitted raised bona fide doubt about his stand taken and relief sought for.

11. The contention of workman further comes under the umbrella of doubt in absence of cause for forceful resignation by the respondent-management. What impels to force to the management for resignation of workman is not answered by the workman as every action has its reaction. What transpires from the record is that workman has tried his best to conceal the real cause behind the resignation. He himself has admitted in his cross-examination that he remained absent in the month of May & June 1994. He has stated that he did not remember the reason of his absence during the relevant period. This reply of workman fortified the stand of the management about the circumstances in which workman has tendered his resignation voluntarily. The case put up by the management is that he has withdrawn illegally certain amount from the bank account holder without his knowledge and in order to avoid the stigma and enquiry he tendered his resignation after suspension order dated 30.06.1994 photocopy of which is Ex.A-8 on record. There is no dispute that acceptance of resignation letter is duly communicated to him vide letter dated 26.07.1994 which is already on record as Ex.R-2. Workman has clearly accepted in his cross-examination that after receiving acceptance letter of resignation, he did not make any complaint/representation to any of the official of the bank for the reason of its issuance. This conduct of workman further fortified the stand of management of bank that resignation was voluntarily and not made under compulsion or duress as alleged by the workman in his claim petition.

12. The documents filed by the management and proved by the witness of bank-letter Ex.R4 executed by workman is not only relevant but decisive because it throws light to the circumstances which was in the background of the illegal withdrawal of Rs.30,000/- from the consumer-account, receiving loan for depositing the sundry account of bank. Document Ex.R-4 is a letter purported to be written by the workman on 31.08.1994 to the Assistant General Manager(Personal) for joining the duty. This facts is specifically mentioned in the written statement along with the Annexure-4 which is later on numbered as Ex.R-4 after the evidence of management witness but workman has neither reputed anything about these averments in his reply filed subsequently nor in his affidavit filed as evidence nor during the cross-examination of the management witness Vinay Dadwal. Workman has not denied his signature affixed on Ex.R-4. Thus, this is document which is not rebutted nor controverted by the workman. Claimant/workman has accepted in his cross-examination that he has not mentioned anything about his suspension or receiving loan from bank in his pleading or affidavit filed as evidence. This statement clarifies that he knowingly concealed these facts to make his version more reliable and true but he has poorly failed. Perhaps this was reason that is why he did not initiate any action in Court or Tribunal against the suspension or acceptance of resignation letter by the management-authority forthwith.

13. Learned counsel of the workman assailing the genuineness of the voluntarily resignation Ex.R-3 and argued that signature of workman's father Chiman Singh has been shown in the resignation letter, which is sufficient in itself to say that this is forged and fabricated document. Learned counsel advancing the argument has drawn attention that making the father of the workman as witness is neither natural nor reasonable because it is the sole consideration of the workman to submit his resignation voluntarily. Contrary to this, learned counsel of the management argued that the circumstances under which Ex.R-3 executed is sufficient to show that workman has accompanied his father at the time of tendering his voluntary resignation. Learned counsel of the management has drawn my attention towards the statement of workman Didar Singh where he has accepted in his cross-examination that he remained absent throughout the month of May and June and argued that knowingly did not explain the reason for his absence from duties. Learned counsel of the management argued that it is the workman's father who accompanied with the workman to get rid of department enquiry and other criminal action purported to be taken by the management. Learned counsel for the management further argued that signature of the workman's father Chiman Singh is genuine and it is Chiman Singh, who can deny this fact. Learned counsel further argued that workman did not examine his father in Civil Suit filed in Civil Court. Further, he did not dare to examine his father in the Tribunal. As per learned counsel of the management, in fact workman's father is not interested to depose falsely about the resignation Ex.R-3 and his signature put at the time of the resignation letter that is why, workman could not get him examined before the Tribunal. There is no explanation on the part of the workman and his counsel as to why father of the workman could not be examined before the Tribunal who was the sole witness for the workman to disprove the facts alleged in Ex.R-3 resignation letter. In my considered view, the father of the workman Chiman Singh was certainly a relevant and important witness who can throw light on the circumstances rendering the resignation letter by the workman but reason best known to the workman, he could not be examined by the workman. Thus, this Tribunal is constrain to draw adverse inference against the workman for withholding the relevant witness for examination before the Tribunal.

14. Having gone through the circumstances of the case and evidence on record, it is pertinent to mention that if the signature of the workman as well as his father on the resignation letter Ex.R-3, affidavit submitted by the workman Ex.R-1 are forged and fabricated then natural question arises as to why workman has not made any F.I.R. against the bank-officials, who are responsible for the fabrication and forgery of the signature as well as documents or made any representation before the bank's higher authorities or any administrative officer. There is nothing on record to indicate

that why this step is not taken by the workman in spite of the litigation lasting more than 20 years till date. This is an important question in my consideration which fortifies the stand taken by the management that it is the workman who has submitted his resignation letter voluntarily and affidavit Ex.R-1and letter dated 31.08.1994 Ex.R-4 which are on record.

15. Learned counsel of the workman during the course of arguments has drawn my attention towards the Oriental Bank Commerce Officers Employees (Discipline and Appeal) Regulation, 1982 and Oriental Bank of Commerce(Officers) Service Regulation 1982 and contended that an order of suspension made or deemed to have been made under this regulation shall continue remain in force until it is modified or revoked by the competent authority to do so. Learned counsel further argued that subsistence allowance has also not been paid during the suspension period which is violation of Chapter IV as well as Industrial Disputes Act. Learned counsel vehemently argued about the provisions of the Rule 20(ii) of the Oriental Bank of Commerce Officers Employees (Discipline & Appeal) Regulation 1982 and argued that an officer shall not leave or discontinue his services or resign the period of notice to the competent authority as prescribed in this regulation. Learned counsel drawing my attention towards Rule 20(ii) argued that workman was terminated when he was placed under suspension against the provisions mentioned in the above sub-Rule. I have gone through the rules mentioned in the Service Rules of 1982. In my opinion, argument of the learned counsel is misconceived because the provisions of three months notice is required in case of officer only not for an employee. It is an admitted fact that workman is Clerk-cum-Cashier who does not fall within the purview of the officer of the bank. Similarly, subsistence allowance is altogether different matter which has no concern with the acceptance of the resignation letter or alleged termination. Learned counsel has drawn my attention towards the judgment of Hon'ble Supreme Court in the case of ***Dr. Pratibha Attri Vs. The State of U.P. 2003(1), S.C.T. page 251*** and argued that resignation made due to frustration treated by the employer is of no consequence without considering the background contest tenure and language. In my considered view, the fact of that case is altogether different and the letter submitted by Dr. Pratibha Attri was instant after receiving show cause notice by the authority of Kamla Nehru Hospital, Allahabad. Hon'ble Supreme Court has held that tenure or language of the letter was not indicative of resignation. As per Hon'ble Supreme Court, the condition of three months notice is mandatory which was not followed in a case and resignation of the doctor was accepted forthwith by the authority of Kamla Nehru Hospital, Allahabad, which was rejected by the Hon'ble Supreme Court. Going through the case in hand, it is clear that after the suspension order dated 30.06.1994, workman took a lot of time for consideration and tendered his resignation on 14.07.1994, which was subsequently fortified by the affidavit dated 02.08.1994 Annexure R-4. Learned counsel of the workman could not drawn my attention towards any rules which prescribed any notice on the part of the workman as required in the case of officer before submission of the resignation letter. Hence, argument advanced by the learned counsel of the workman has no force in the eye of law.

16. So far as the arguments of the learned counsel of management is concerned that petition is time barred and reference is not maintainable by virtue of limitation, does not appear forceful relating to the case which is referred under Industrial Disputes Act, 1947. Learned counsel of the management has drawn my attention towards the judgment of Hon'ble Punjab & Haryana High Court in ***Civil Writ Petition No.16451 of 1995 General Manager, Punjab Roadways, and another Vs. Amrik Singh and another, decided on 10.05.2013,*** in which it is observed by the Hon'ble Court that there is no time limit prescribed for raising reference but stale dispute cannot be referred in the Industrial Disputes Act. Hon'ble High Court was of the view that the reference so in question was preferred after 15 years and accordingly, it was held that though there is no time limit prescribed but still such dispute cannot be referred under Section 10 of the Act. Learned counsel of the workman argued that the facts of the above case is altogether different and proposition of law is well settled by the Hon'ble Supreme Court in case of ***Sapan Kumar Pandit Vs. U.P. State Electricity Board & Ors.(2001) 6 SCC, Page 622, Avon Services Production Agencies(Pvt.) Ltd. Vs. Industrial Tribunal, Haryana & Ors.(1989) 1 SCC, page 1.*** The Hon'ble Supreme Court in Sapan Kumar(supra) has held that:-

> ***"15. There are cases in which lapse of time had caused fading or even eclipse of the dispute. If nobody had kept the dispute alive during the long interval it is reasonably possible to conclude in a particular case that the dispute ceased to exist after some time. But when the dispute remained alive though not galvanized by the workmen or the Union on account of other justified reasons it does not cause the dispute to wane into total eclipse. In this case when the Government have chosen to refer the dispute for adjudication under Section 4K of the U.P. Act the High Court should not have quashed the reference merely on the ground of delay. Of course, the long delay for making the adjudication could be considered by the adjudicating authorities while moulding its reliefs. That is a different matter altogether. The High Court has obviously gone wrong in axing down the order of reference made by the Government for adjudication. Let the adjudicatory process reach its legal culmination."***

The facts of the case in hand is not disputed that workman is contesting his alleged termination not through this reference but by filing civil litigation which went in appeal up to the High Court. Thus, it is very much clear that workman had kept the dispute alive during the long interval. Hence, I am of the opinion that in given facts and

circumstances it cannot be observed that the present reference is stale and barred by limitation as argued by the learned counsel of the management.

17. Learned counsel of the workman has contended that Civil Court has got no jurisdiction as was the stand of the management-bank itself in the written statement as such, judgment and order passed by the Trial Court as well as Appellate Court is nullity and has no legal consequences. Learned counsel of the workman further argued that the judgment and decree of the Lower Court and Appellate Court being nullity, principles of estopple as well as res judicata is not applicable. Learned counsel of the workman has placed reliance in the case of ***General Manager, Punjab Roadways Vs. Sh. Darshan Singh, Ex-Conductor and another, 1996, RSJ page 815, Hon'ble Punjab & Haryana High Court, RSTC Vs. Deen Dayal Shyarma, 2011(1) RSJ Supreme Court,*** and argued that Civil Court has got no jurisdiction to decide an industrial dispute. Contrary to this, learned counsel of the management while placing reliance to the case of ***General Manager, Punjab Roadways Vs. Amrik Singh and Oth., 2013(2) LLR page 764 of Hon'ble Punjab & Haryana High Court,*** argued that suit is barred by principles of res judicata as is held in the above case by the Hon'ble Punjab & Haryana High Court. I have gone through the judgments cited by either of the parties and it can be safely observed that there is no doubt that the dispute between the workman and management in regard to the alleged termination comes within the meaning of Industrial Dispute as such, jurisdiction of the Civil Court is excluded to try such a suit and Civil Court has no jurisdiction to grant a declaration that the order of termination is bad being an industrial dispute. The Hon'ble Punjab & Haryana High Court in the case of ***General Manager Punjab Roadways(supra)*** has held that decree and judgment of Civil Court are not binding on the Labour Court and the same does not comes as res judicata. Similar view is endorsed by the Hon'ble Supreme Court in the case of ***RSRTC and Oths. Vs. Deen Dayal Sharma(supra),*** which was related with the dismissal of an employee of the Rajasthan Roadway. No doubt the Hon'ble Punjab & Haryana High Court (Single Judge) while interpreting Section 11 of C.P.C. 1908 has held that if workman himself filed a civil suit, choosing the jurisdiction of Civil Court and availed his remedy unsuccessfully then he cannot thereafter approached to the Industrial Tribunal as the principle of res judicata bars such type of suit before the Labour Court. Looking the nature of the case and dispute between the parties, this Tribunal is of the opinion that the relief sought by the workman regarding the declaration of termination as null and void was not maintainable before the Civil Court hence, the principle of res judicata and estopple are not applicable because the judgment and decree of the Civil Court has nullity and is not binding upon the workman as is held by the Hon'ble Supreme Court in the case of ***Sushil Kumar Mehta Vs. Gobind Kumar Bohara, 1998, SCC page1, 193.*** Thus, the arguments of the learned counsel of the management regarding the applicability of res judicata as well as estopple has no force and this claim petition is maintainable before the Tribunal.

18. Learned counsel of the workman has argued that the alleged voluntarily resignation is the result of force by the management and on the basis of such resignation, acceptance by the management is not legal as is held by the Hon'ble Punjab & Haryana High Court in the case of ***Khitab Singh Vs. Presiding Officer, Labour Court and Oth.*** and confirmed by the Supreme Court in the case of ***M/s Allied Cycle Haryana Authority Vs. Khitab Singh, arising out of SLP(C) No.1674 of 2009, decided on 14.01.2013.*** The argument of learned counsel of the workman in the light of the above judgment of the Hon'ble Punjab & Haryana High Court and Hon'ble Supreme Court has no force because the facts alleged in the above cited cases are altogether different from the case in hand. In the case of Khitab Singh, the management has not explained the reason of resignation as well as the workman has raised the issue on the date of alleged voluntarily resignation before the management and higher authorities including the Chief Minister. Hon'ble Supreme Court was of the opinion that these facts are not considered by the Labour Court, pointed out by the Division Bench of the Hon'ble High Court of Punjab & Haryana, which is fully justified. The facts of the present case is altogether different in which the reason of voluntarily resignation is not only explained by management but also proved by the management from the evidence of the workman himself. It is pertinent to mention that workman has raised the issue for the first time before the Civil Court that too after the lapse of more than 6 months. Thus, the workman is not entitled to get any benefit in the light of the judgement of the Hon'ble Punjab & Haryana High Court and Hon'ble Supreme Court as mentioned above.

19. Moreover, the cases of Industrial Dispute has to be decided on the basis of principle of **preponderance of probability** rather than proof beyond reasonable doubt as is held by the Hon'ble Supreme Court in the cases of ***Union of India Vs. Sardar Bahadur(1974)4 SCC 618, R.S Singh Vs. State of Punjab and other(1999)8 SCC page 90,*** and in the case of ***State Bank of India Vs. Narender Kumar Pandey, Civil Appeal No.263/2013 dated 14.01.2013.*** The evidence

on record makes it abundantly clear that above principles is certainly in favour of the management in comparison to the workman, who has miserably failed to convince this Tribunal by cogent evidence that alleged resignation is result of force or compulsion made by the management.

20. Having gone through the above factual and legal proposition, this Tribunal is of the considered opinion that workman is unable to prove that management of Oriental Bank of Commerce has terminated his services w.e.f. 14.07.1994. In fact, this is a case of voluntarily resignation which is accepted by the management in due course as such, it cannot be observed that workman is illegally terminated in unfair and unjustified way. Hence, claim petition is liable to be dismissed.

21. Let copy of the award be sent to the Central Government for publication of the same as required under Section 17(2) of the Act.

A. K. SINGH, Presiding Officer

नई दिल्ली, 31 अक्तूबर, 2019

का.आ. 1932.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार केनरा बैंक के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय नं. 2, धनबाद के पंचाट (संदर्भ सं. 79/2012) को प्रकाशित करती है जो केन्द्रीय सरकार को 31.10.2019 को प्राप्त हुआ था।

[सं. एल–12012/1/2012–आईआर (बी–II)]

सीमा बंसल, अनुभाग अधिकारी

New Delhi, the 31st October, 2019

S.O. 1932.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 79/2012) of the *Cent.Govt.Indus.Tribunal-cum-Labour* Court No. 2, Dhanbad as shown in the Annexure, in the industrial dispute between the management of *Canara Bank,* and their workmen, received by the Central Government on 31.10.2019.

[No. L-12012/1/2012-IR(B-II)]

SEEMA BANSAL, Section Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL (NO. 2), AT DHANBAD

PRESENT: Dr.S.K.Thakur, Presiding Officer

In the matter of an Industrial Dispute under Section 10(1) (d) of the I.D.Act., 1947

REFERENCE NO. 79 OF 2012

PARTIES: : Shri Madhav Ch.Das,
29, Vikashnagar, Balbihar,
Sonari, Jamshedpur
(Jharkhand).

Vs.

The Dy. General Manager,
Canara Bank, Circle Office,
Ranchi, Jharkhand
Order No**. L-12012/1/2012-IR(B-II) dt.27.09.2012**

APPEARANCES :

On behalf of the workman/Union : Mr.D.K.Verma, Ld. Advocate.
On behalf of the Management : Mr.Ashok Anand Ld. Advocate

State : Jharkhand Industry : Banking

Dated, Dhanbad, the 30th August, 2019

AWARD

The Government of India, Ministry of Labour and Employment , in exercise of the powers conferred on it under Sec.10(1)(d) of the I.D. Act.,1947 has referred the following dispute to this Tribunal for adjudication vide their Order No**. L-12012/1/2012-IR (B-II) dt.27.09.2012.**

SCHEDULE

''Whether the action of the Management of Canara Bank in imposing the punishment of compulsory retirement on Shri Madhav Chandra Das, Ex-Sub-Staff vide Order dated 5.03.2010, is legal and justified? What relief the concerned workman is entitled to?''

2. On receipt of the Order No. **L-20012/1/2012-IR (B-II) dt.27.09.2012** of the above mentioned reference from the Government of India, Ministry of Labour & Employment, New Delhi for adjudication of the dispute, the Case was registered on 31.10.2012 as Ref.No. 79 of 2012 and accordingly an order to that effect was passed to issue notices through the Registered Post to the parties concerned, directing them to appear in the Court on the date fixed and to file their written statements along with the relevant documents. In pursuance of the said order, notices by the Registered Posts were sent to the parties concerned.

Both the parties made their appearances and filed their pleadings and copies of their documents. The Workman side and the O.P./Management through their Rep. /Counsel appeared and pleaded the case.

As per record, the instant case had also been filed directly by the concerned workman under Industrial Dispute (Amendment) Act ,2010 under Sec. 2(a) (2) and registered as I.D. 3/2012 against the alleged illegal compulsory retirement. Consequent upon receipt of W.S. by workman, notice was issued to the O.P./Management for filling WS/Rejoinder. Finally ,Management filed WS/Rejoinder on 16.05.2013.In the mean time, an order of reference received from the Union Government Ministry vide its order No.L-20012/1/2012-IR(B-II) dt.27.09.2012 and registered as Ref. No. 79/2012.As per order dated 16.05.2013,the existing ID case raised before this Tribunal was tagged with Ref. No. 79/2012.Subsequently,both sides filed copies of W.S. and documents including inquiry proceedings and case was posted for evidence of Management on preliminary point.

3. The case, as claimed and stated in W.S. from the workman, in brief, is as follows:

(a) Shri Madhav Chandra Das, an Ex-Sub-staff who had been working at Canara Bank, Dimna Road, Mango, Jamshedpur with unblemished service track record without stigma.

(b) The Management abruptly issued charge-sheet to him on certain misconduct ground like duping the customers, misuse of the official capacity etc. The charge sheet was issued by the Authority not competent to do so.

(c) Though workman concerned replied to the charge-sheet, the O.P./Management without taking into consideration the said explanation constituted an inquiry against the delinquent workman .

(d) Subsequently the inquiry was conducted forcefully in one way depriving workman of opportunity to be heard /represented and or assisted by co-worker of his choice despite several request as the workman was not aware of the rules and procedures.

(e) The so-called inquiry was conducted in biased manner and Management had acted as prosecutor.

(f) The workman claimed to have many valid and solid reasons for declaring the Inquiry Report perverse and partial.

(g) Based on the alleged bias inquiry the Inquiry Officer conducted the domestic inquiry and finally Management issued the Letter of termination in the form of Compulsory Retirement to the workman concerned.

4 Whereas, categorically denying all the allegations as stated by the workman in his W.S, the Management asserted that :-

(a) The workman Sri M.C.Das, Ex-Sub Staff was undoubtedly issued charge sheet dt. 05.05.2009 on the ground of certain misconducts such as bribery , misappropriation of Government money and indulging in unlawful activities on his part while working at Toiladungri Branch of the Canara Bank of Jamshedpur.

(b) As reply of the workman was not found satisfactory the Disciplinary Authority ordered for constitution of an inquiry to go bottom of the factum to ascertain the workman's misconduct .The Inquiry Officer held the workman guilty of the charges framed .

(c) The Inquiry was held duly observing the principle of the natural justice and procedures with full participation of the workman concerned along with Defence Representative .

(d) Finally the Disciplinary Authority taking into consideration of the facts, evidence on record and findings of Inquiry Officer inflicted the punishment of Compulsory Retirement leading to an appeal to the Appellate Authority by the aggrieved delinquent workman.

(e) The workman appealed before the Appellate Authority and the Appellate Authority after analyzing the matter came to the conclusion that there is no reason/ material to interfere with the said punishment awarded by the Disciplinary Authority, thereby paving the way for confirmation of the punishment already imposed.

(f) Disciplinary Authority as well as the Appellate Authority asserted to have discharged the responsibility with utmost care and caution and with due diligence. The discretion in imposition of penalty usually rests with Disciplinary Authority/Appellate Authority depending upon the nature of case such as gravity of misconduct, past conduct and the nature of duties assigned to the delinquent workman holds. Considering the circumstances and facts the workman is not entitled for any relief from this Tribunal.

(g) The Management in its rejoinder also denied all the allegations, levelled against it point wise, reaffirming the stand of action of the Management in consonance with principle of natural justice.

5. The matter was heard on various dates for providing opportunities to both the parties for filing replies, relevant documents and arguments in support of their respective contention.

6. During the course of hearing a petition was filed by the concerned workman Shri Madhav Ch.Das praying to close the case as he does not want to contest this case any further .On receipt of petition, notice was issued to the parties concerned fixing the date of hearing on 31.07.2019.

Ld. Advocate for Management Mr.Ashok Anand showed no objection, if the case is withdrawn by the petitioner.

7. In view of the above facts and materials on record, I find no scope to continue with this case further for adjudication particularly when the workman who raised the dispute is not interested to proceed and contest the instant case. The proceeding is accordingly concluded and the prayer of the petitioner is allowed .The Reference case may be treated as withdrawn and disposed off accordingly.

Dr. S. K. THAKUR, Presiding Officer

नई दिल्ली, 31 अक्तूबर, 2019

का.आ. 1933.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार बैंक आफ बड़ौदा के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, चैन्नई के पंचाट (संदर्भ सं. 41/2018) को प्रकाशित करती है जो केन्द्रीय सरकार को 31.10.2019 को प्राप्त हुआ था।

[सं. एल–39025/01/2019–आईआर (बी–II)]

सीमा बंसल, अनुभाग अधिकारी

New Delhi, the 31st October, 2019

S.O. 1933.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 41/2018 of the *Cent.Govt.Indus.Tribunal-cum-Labour Court,* Chennai as shown in the Annexure, in the industrial dispute between the management of Bank of Baroda, and their workmen, received by the Central Government on 31.10.2019.

[No. L-39025/01/2019-IR(B-II)]

SEEMA BANSAL, Section Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIALTRIBUNAL- CUM-LABOUR COURT CHENNAI

ID No. 41/2018

Present: DIPTI MOHAPATRA, LL.M., PRESIDING OFFICER

Date: 23.09.2019

Sri M. Ramakrishnan
S/o Marimuthu
No. 51, Dr. Ambedkar Nagar, Chithode Post
Erode-638102 : 1st Party/Petitioner

AND

1. The Branch Manager
Bank of Baroda, Erode Branch
Erode District : Respondent

2. The Dy. General Manager
Bank of Baroda, Regional Office
No. 82, Bank Road, 3rd Floor
Coimbatore : Respondent

3. The General Manager
(Tamilnadu and Kerala Zone)
Zonal Office, Mylapore
Chennai : Respondent

Appearance:

For the 1st Party/Petitioner : Advocate Sri S.P. Srinivasan & Associates

For the 2nd Party/Respondents : Advocates M/s T.S. Gopalan & Co.

AWARD

This is an Application under 2A(2) of the Industrial Dispute Act.

The Applicant's case in brief is that he joined on 28.02.1994 as Peon under the Respondent, the Bank of Baroda, a Public Sector Bank and continued in different branches with artificial breaks. He was orally directed on 18.12.2014 not to report for duty from 19.12.2014.

2. Being aggrieved with the order he made a representation on 17.03.2015 to the then Branch Manager who assured him to send the representation to the Regional Office, Coimbatore. No action was taken on his representation nor he was reinstated. He approached the Hon'ble High Court vide Writ Petition No. 38444/2015 which was disposed on 20.07.2017, granting liberty to the petitioner to approach the appropriate authority in this regard . The petitioner accordingly once again approached the Respondent but invain. He approached the Conciliation Officer, Coimbatore. Since there was no Officer, his matter in issue was taken up by the Conciliation Officer, Madurai (Incharge). The dispute could not be resolved before the Conciliation Officer, hence the conciliation ended in failure. However, the Conciliation Officer issued a Certificate to the effect enabling the petitioner to approach this Forum of Industrial Tribunal for redressal of his grievance. The Applicant accordingly filed the Application under 2A(2) challenging the termination order dtd. 18.12.2014 of the Respondent.

3. The Respondent entered appearance by filing its Counter that when the rule of limitation is prescribed for approaching the judicial Forum the same will automatically operate irrespective of whatever circumstances in which the delay was caused. The Respondent strenuously raised objection on the issue of Admission on the point of Limitation. Reliance is placed in the case of WP(MD) No. 4269/2017 in the case of ***RAVI KUMAR VS. TAMIL NADU STATE TRANSPORT CORPORATION 2017 SCC MAD 20409*** and in WP(MD) No. 15552/2015 in the case of ***PRINCE PACKIANATHAN VS. THE GENERAL MANAGER, TAMIL NADU TRANSPORT CORPORATION, NAGERCOIL***.

4. Pending disposal of Admission of the ID case, the Counsel for the Applicant moves the petition for withdrawal of the Application where he does not dispute the issues raised on the point of limitation for admission of the 2A(2) Application. It is contended that the petitioner has not approached the Industrial Tribunal directly but on being granted with liberty by the Hon'ble High Court in Writ Petition No. 38444/2015 dtd. 20.07.2017, approached the conciliation proceeding within the period of 3 years from the date of termination.

When the dispute was not resolved before the Conciliation Officer, on being issued with the Certificate by the Conciliation Officer, the petitioner/applicant approached this Forum under 2A(2). Admittedly, the certificate issued by RLC (which is enclosed with the Application) discloses that the mandatory stipulated period of 45 days (in view of 2A(2)) from the date of raising the dispute before the RLC expires on 26.10.2017. As such, the petitioner was at liberty to approach this Forum before expiry of 3 years (in view of 2A(3) of the amended provision of the Act) from the date of the alleged termination i.e. 18.12.2014. But the Applicant approached this Forum on 14.09.2018 which is not within the period of 3 years, but almost 9 months more than the stipulated period of 3 years.

The Learned Counsel for the Applicant-Petitioner advances his submission expressing the Petitioner's desire to approach the appropriate Conciliation Authority once again to try his luck. It is further submitted in case of failure to resolve the dispute, the Conciliation Officer may move the appropriate Government for further follow-up action and if there exists any Industrial Dispute, the appropriate Government may refer the dispute to the Industrial Tribunal for adjudication under 10(1)(d) of the ID Act. The Learned Counsel emphasizes the Applicant-Petitioner may have a fair chance to contest the dispute under the Act, hence prays for withdrawal of the Application.

5. In view of the submission of the Learned Counsel for both parties and discussion held in preceding paragraphs, there is no legal impediment to allow the Applicant for withdrawal of the Application. The Withdrawal Petition is accordingly allowed.

In the result the ID 41/2018 is disposed of.

(Dictated and transcribed by PA and
corrected and pronounced in the open
court on this day the 23rd Sept., 2019)

DIPTI MOHAPATRA, Presiding Officer

शुद्धिपत्र

नई दिल्ली, 1 नवम्बर, 2019

का.आ. 1934.—CGIT, चेन्नई द्वारा IA 36/2019 दिनांक 09.08.2019 के आदेश का अनुसरण करते हुए, संदर्भ संख्या 77/2014 दिनांक 18/09/2015 के तहत CGIT चेन्नई द्वारा पारित पुरस्कार जो आधिकारिक गजट में S.O. नंबर 1994 दिनांक 17/10/2015 को प्रकाशित किया गया, निम्नानुसार संशोधित किया जाता है: -

"पूर्वोक्त पुरस्कार में उल्लेखित याचिकाकर्ता / कर्मकार का नाम B. Ralalingam के स्थान पर B. Sivaramalingam के रूप में पढ़ा जा सकता है।"

[सं. एल-12012/43/2014-आईआर (बी-1)]

बी. एस. बिष्ट, अवर सचिव

CORRIGENDUM

New Delhi, the 1st November, 2019

S.O. 1934.—In pursuance of CGIT,Chennai order in IA 36/2019 dated 09.08.2019, the Award under reference No. 77/2014 dated 18/09/2015 passed by CGIT Chennai and published in the official gazette vide S.O. No. 1994 dated 17/10/2015 is amended as under :—

"The name of the petitioner/ Workman mentioned in the aforesaid Award may be read as **B. Sivaramalingam** in place of **B. Ramalingam."**

[No. L-12012/43/2014– IR(B-1)]

B. S. BISHT, Under Secy.

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, CHENNAI

Thursday, the 9th August, 2019

I.A. No. 36/2019
in
I.D. No. 77/2014

Sri B. Sivaramalingam
No. 9, SBI Colony
Kongu Nagar Extension
4th Street
Thirupur-641007 …Petitioner

Vs.

1. The Dy. General Manager
   State Bank of India
   Disciplinary Proceeding Cell
   Zonal Office
   Madurai.

2. The Assistant General Manager
   Region-II
   State Bank of India
   Disciplinary Proceeding Cell, Zonal Office
   Madurai

3. The Regional Manager
   State Bank of India
   RBO-II, Administrative Unit
   No. 2, Dr. Ambedkar Road
   Madurai-625002 …Respondents

Appearance:

For the Petitioner	:	Advocates, M/s. Law Square
For the Respondents	:	Advocates, Sri S. Raveendren, S. Bazeer Ahmad, S. Gomathi Lakshmi

Extract of the Order

09.08.2019 XX XX XX The IA is initiated by the Applicant by one Sri B. Sivaramalingam for correction of an inadvertent mistake crept in, so far his name is concerned in the Award dtd. 18.09.2015 passed by this Tribunal. He files an Affidavit to the effect that a portion of his name i.e. "Siva" is omitted in the Petitioner's name in the Award. It is prayed by the Applicant that unless the petitioner's name is corrected by inserting the omitted portion, he will be seriously prejudiced.

2. In view of the facts submitted by the Applicant, perused the disposed of original record in ID 77/2014. On receipt of the reference the dispute was registered and hearing was taken up by this Tribunal. The Applicant/Petitioner examined himself as WW1. It reveals that the petitioner on oath stated before this Tribunal his correct name and put his signature as B. Sivaramalingam at the end of deposition dtd. 01.07.2015. Besides, some relevant documents under Ext.W1 to Ext.W3, Ext.W7 to Ext.W11 and Ext.W14 were marked during the course of hearing. Those are the letters of

correspondence made by the Respondent in favour of the petitioner in the instant ID case. All the letters bear the correct name of the Petitioner as B. Sivaramalingam.

3. At the outset, on going through the deposition and relevant documents as discussed above it is held perhaps due to typographical mistake or oversight the name of the petitioner in the reference dtd. 17.09.2014 of the Appropriate Government was shown as B. Ramalingam instead of B. Sivaramalingam which could have been corrected by issuance of CORRIGENDUM.

4. However it being an inadvertent omission/mistake crept in the Award can be corrected to give the full shape of the correct name of the Petitioner. Accordingly, the name of the petitioner in the Award dtd. 18.09.2015 is hereby corrected by inserting the omitted portion of the name "Siva" in between B and Ramalingam in the interest of justice.

5. The office to carry out the correction accordingly. A copy of the Award after insertion of the omitted name "Siva" be sent to the Ministry for necessary action at their end.

The IA 36/2019 is disposed of.

Sri B. SIVARAMALINGAM , Presiding Officer

शुद्धिपत्र

नई दिल्ली, 5 नवम्बर, 2019

का.आ. 1935.—संदर्भ संख्या 51/2009 दिनांक 09/07/2019 के तहत CGIT, बैगलोर द्वारा पारित पुरस्कार जो अधिसूचना दिनांक 13/08/2019 द्वारा आधिकारिक गजट में प्रकाशित किया गया, निम्नानुसार संशोधित किया जाता है:—

"पुरस्कार संख्या सीआर नंबर 51/2009 के ऑपरेटिव भाग पृष्ठ संख्या 23 में प्रदर्शित तारीख को 07.08.2008 के बजाय "07.05.2008" के रूप में पढ़ा जाये |"

[सं. एल-12012/50/2009-आईआर (बी-1)]

बी. एस. बिष्ट, अवर सचिव

CORRIGENDUM

New Delhi, the 5th November, 2019

S.O. 1935.—The Award under Reference No. 51/2009 dated 09.07.2019 passed by CGIT –LC Bangalore, was published in the official gazette vide Notification dated 13/08/2019 is amended as under :—

"The date appearing in the operative part of the award on page No. 23 of the award may be read as "07.05.2008 " instead of '07.08.2008" in award No. CR No. 51/2009"

[No. L-12012/50/2009–IR(B-1)]

B. S. BISHT, Under Secy.

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIUBNAL-CUM-LABOUR COURT, BANGALORE

DATED : 09TH JULY 2019

PRESENT : Justice Smt. Rathnakala, Presiding Officer

CR 51/2009

I Party

Sh. B. N. Ashwath Narayana,
H. No./ 17/1, 22nd Cross,
Bhavaneshwari Nagar,
K.P. Agarahara,
Bangalore - 560023.

II Party

The Dy. General Manager,
The Karnataka Bank Ltd.,
Head Office,
Mahaveer Circle, Kankanady,
Mangalore - 575002.

Appearance

Advocate for I Party : Mr. S. Ramesh

Advocate for II Party : Mr. Ramesh Upadhyaya

AWARD

The Central Government vide Order No. L-12012/50/2009/IR(B-I) dated 12.10.2009 in exercise of the powers conferred by Clause (d) of Sub-Section (1) and Sub-Section2(A) of Section 10 of Industrial Dispute act, 1947 (for brevity 'the Act' hereafter) referred the following Industrial Dispute for adjudication.

"Whether the action of the management of Karnataka Bank Limited, Head Office of Mangalore, Karnataka in dismissing Sh. B.N. Ashwath Narayna, Ex-Attender from services w.e.f 07.05.2008 is legal and justified? If not, what relief the applicant is entitled to?"

1. The fact is, the 1st Party workman was appointed as an Attender in the 2nd Party on 18.12.1982, on certain allegations he was issued charge sheet dated 08.05.2004 was served on him and he was kept under suspension. He submitted his reply denying the charges. The Disciplinary Authority decided to hold Domestic Enquiry to probe into the charges and appointed the Enquiry Officer. On holding the enquiry, the Enquiry Officer submitted his report that, the Charges No. II (2-6) is proved and Charge No. II (1) is not proved. The Disciplinary Authority called for remarks of the 1st Party on Enquiry Report, accordingly he submitted his report. However, acting on the enquiry report the Disciplinary Authority dismissed him from service w.e.f 07.05.2008.

2. In his claim statement the 1st Party took exception to the mode, the Domestic Enquiry was held and also contends that the enquiry report is totally perverse and biased. He contends that the Management has not taken any action against the real culprits; the 2nd Party victimized him and dismissed him from service w.e.f 07.05.2008. He further contends that, his appeal before the Appellate Authority did not survive. He is not gainfully employed and struggling for survival of himself so also for his dependent family.

The 2nd Party in their counter statement have denied all the allegation made by the 1st Party and justified their actions.

3. On the rival pleadings of the Parties this Tribunal framed a Preliminary issue regarding the validity of the Domestic Enquiry held by the 2nd Party. After a full-fledged trial the issue is answered (vide order dated 16.05.2013), in the affirmative i.e., the Domestic Enquiry held against the 1st Party by the 2nd Party is fair and proper.

4. The 1st Party thereafter adduced evidence stating that he is victimized by the 2nd Party and submitted his written arguments. Reply argument is submitted by Sh. RU for the 2nd Party.

5. The allegation against the 1st Party as per the Charge Sheet was,

While working as Attender at Bangalore – Srinagar Branch

a) He fraudulently withdrew amounts of SB A/c using cheque leaves bearing postal signatures of the respective Account Holders. He has stolen the cheque books which were kept. (details of the cheque leaf number, amount withdrawn, the number and name of the SB A/c and the account holder, Date of withdrawal are detailed with the charge)

b) He stole the FD receipts, forged the signature of the depositors in the loan application, documents and deposit receipts, availed term deposit loans by pledging the receipts (four deposit loan numbers with respect of amount of loan, name of the depositor, date of loan, the term deposit pledged are mentioned along with the charge).

c) He produced a fake salary certificate and offered the same as surety to avail to term loan of Rs. 50,000/- by Sh. Naveen D J.

d) He attempted to cheat the Bank by transferring his vehicle which is hypothecated to the Bank during the currency of the loan availed to purchase the said four-wheeler under the staff loan scheme.

He got executed a registered sale deed dated 13.02.1981 in respect of the House property in his favour by impersonation.

During the enquiry the management examined as many as 14 witnesses and exhibited 97 documents. The 1st Party workman examined himself as a witness and produced 6 documents.

6. One of the term deposit holder namely Sh. H. S. Keshav Kumar, who was referred in the charge sheet was examined as the witness in respect of the Charge No. I (b). He stated that when he went to the Branch to get the payment of midterm deposit, he learned that deposit loans were raised on the Security Office renewed ACC No. 170386. Further, the Manager showed him the ACC receipt generated through the computer; which had signature as Sh. Keshava Kumar, but the said signature was not his signature. Likewise, he disputed the signatures on the loan application, loan documents etc., as not his signature and the handwriting in those documents is not his handwriting.

7. Another witness Smt. Shylashree MW-9/Bank Official, had deposed that, she had renewed the term deposit by making necessary entry on the reverse of the receipt, but by mistake she took out computer printout receipt of Ex M-6 for renewal of receipt Ex M-5, she was also a staff who prepares loan documents, when the regular clerk in the loan department was on leave. She received loan application (Ex M-7) took delivery letter and the debit slips since, the clerk in the loan section was on leave she filled up the loan documents and opened the loan account, the documents sent to her were signed as Keshav Kumar. In the light of the above evidence, the Enquiry Officer held that there were dissimilarities in the signature found in the loan documents with the specimen signature of Sh. H S Keshav Kumar.

8. The Enquiry Officer further examined the joint loan documents pertaining to Sh. Shamaprasad H.S and Smt. H. Chandrika Narayan. Sh. H. Chandrashekar Udupa/Officer (MW-7) he had given statement to the Investigating Officer and admitted that, preparing the loan documents without comparing the signature of the borrower in the loan application and other loan documents, with the signature of depositor Sh. H S Shamaprasad. He deposed that CSE had informed that the depositor is sitting outside the counter, relaying the same he had filled up the loan documents. He admitted that signature in the loan documents do not tally with the signature of Sh. H.S. Shamaprasad. MW-3 the Manager, had deposed that since the loan documents duly filled, he sanctioned the loan. Sh. G. Chandrashekar the person named in the charge sheet at Sl. No. 3 pertaining to charge I(b) was examined as MW-11. Similar was the evidence stated by him and he disputed the signature found on the loan applications and also loan application form, debit slip and delivery letter. He also disputed the signatures of renewal of the term deposit receipt and stamp discharge.

9. MW-8 the Clerk of the Branch deposed that, the document filled and signed was kept on her desk; she fed the particulars of the said loan accounts into the system and sent the documents to the Manager. The then Officer MW-1, deposed that he sanctioned the loan without verifying the signature of Sh. Chandrashekar. The Enquiry Officer further observed serious discrepancies committed/overlooked at different stage of creating/sanctioning/releasing the loan amount.

10. The fourth Account Holder referred in the charge sheet Sh. Srinivas Murthy G was examined as MW-10. He disputed the signatures on the loan documents which were signed as Srinivasa Murthy. similar was the evidence as above Sh. Chayapathi MW-3/the Manager had admitted that he had written the amount Rs. 20,000/- since, the 1st Party had approached him with a set of duly signed documents stating that depositor is waiting for getting the DL facility for Rs. 20,000/- sanctioned. MW-3 admitted sanctioning DL 616 on security of deposit, he had stated that the 1st Party had represented that depositor is sitting outside the cabin, believing the same without further enquiry he sanctioned the loan. The Loan pertaining to Srinivasa Murthy was closed on 09.01.2004 by transferring the funds from Sundry Assets Suspense Account.

The other Clerical Staff namely Smt. Vanamala L Sinha had precisely corroborated the statement of MW-3, according to her the 1st Party produced the blank DL forms before her for documentation stating that the party is in urgent need of deposit loan. When she expressed her inability to attend the work, he took the paper to Smt. M B Rekha who obliged. Clerk Smt. M B Rekha MW-8 corroborated the Statement of Smt. Vanamala L Sinha.

There was ample evidence regarding the financial liabilities incurred by the 1st Party. During his cross examination also he had admitted that he owes Rs. 1,40,000/- to his creditors, he had requested the Deputy General Manager HR and IR Department to direct the Manager not to honour any cheques in his SB A/c 8767 or direct to close his SB A/c 8767 with permission to open new SB A/c, in respect of 80 cheques issued he had sought for stop payment. Relaying on this circumstantial evidence the Enquiry Officer records that, he also took interest in getting deposit loans sanctioned and recorded the finding of guilt in respect of the above allegations.

11. Regarding the allegation of producing the fake Salary Certificate while standing surety for loan sanctioned in favour of Sh. Naveen (Thyagaraja co-operative Bank), in his own letter 1st Party had admitted that he had given the relying certificate without the signature of Bank Officials. On the request of his friend one Sh. Ravi working as Attender at Thyagaraja Co-operative Bank Ltd., he had given two photos and signed on loan applications without filling up any details. An Official (MW-5) of the Thyagaraja Co-operative Bank had deposed with regard to the loan transaction so also the indulgence of the 1st Party as surety. He had produced the Salary Certificate, on demand promissory note, letter of Authority for wage deduction, irrevocable salary Authorization under section 34 of Karnataka Co-OP Societies Act.

12. The 1st Party during his cross examination admitted his signatures on these documents, though he disputes the identity of Sh. Naveen. He had also admitted in his reply to the charge sheet that the Manager had refused to sign the salary certificate and his friend had taken the said salary certificate from him; as per the terms of loan sanction, from his salary there used be deduction to which fact he had admitted. In the salary certificate he had given false information regarding his home take salary, considering the same the Enquiry Officer held that he had fabricated the Salary Certificate and stood as surety to the loan.

13. Regarding the allegation of transfer of the vehicle during the currency of the loan, the transferor of the vehicle was examined as MW-4. The documents i.e., sale receipt, RTO form 29 and form 30, authorization letter two non-judicial paper of Rs. 100/- each, letter of transfer of insurance and two cheques bearing the signature of the 1st Party were produced by him. During his cross examination 1st Party admitted his signatures on the documents. The Enquiry Officer noticed that, he had requested the Deputy General Manager vide letter dated 21.03.2005 to seize the vehicle and appropriate the sale proceeds toward his outstanding liabilities under vehicle loan account, on that he was called upon to surrender the vehicle and to keep the same at the Branch. Instead of surrendering the vehicle, he sought instruction from Deputy General Manager HR and IR Department to stop deduction of his loan instalment from subsistence allowance paid to him, and arranged for seizure and auction of the vehicle and appropriate the sale proceeds to loan account.

14. The Enquiry Officer took note of his conduct in not surrendering the vehicle, and inferred that 1st Party is not in possession of the vehicle. Since, there is no acceptable explanation about executing RTO Forms and handling them to MW-4/Sh. Bairesh, the Enquiry Officer records that the documents were executed and given to MW-4 for transfer of the vehicle. It was the defence that the vehicle stood in the name of the 1st Party only and the vehicle loan stands cleared but, that did not convince the Enquiry Officer and he records that the 1st Party attempted to cheat the Bank.

15. Regarding the allegation that he got executed a sale deed in his favour by impersonation, though the seller was not examined as the witness through Investigating Officer the copy of the sale deed was marked in the evidence. The 1st Party did not dispute the sale transaction. The allegation was he got the sale deed by Sh. Rangappa and 2 persons impersonating as Smt. Lakshmi and Sh. Krishna (Major Children of Sh. Rangappa). Sh. Rangappa was made to believe that he mortgaged the property availed by him. A Civil Suit was filed by Sh. Rangappa and his seven children against 1st Party to avail the same. Relaying on the documentary evidence said charge is also held as proved.

16. The 1st Party has raised legal questions against the finding of the Enquiry Officer, they are:

i) The documents sought by him during the course of the enquiry were not produced before the Enquiry Officer.

ii) His education qualification is seventh standard and he was working as an Attender and cannot be held responsible in fabrication of the documents, sanctioning and disbursal of the loan in favour of fictitious persons.

iii) The loan accounts referred at Charge no. 1(b) was closed even before charge sheet was issued. The Bank has not disclosed who paid the loan alleged to have been disbursed.

iv) None of the Officers / Clerks of the Bank who pass the cheque and payments directly there by caused loss to the Bank were subjected to disciplinary action. The 2nd Party discriminated him from the other Officials who are really responsible for the fraudulent loan transaction and victimised him.

v) There was no compliant from any of the Account Holders against him. None of the witness alleged that 1st Party alone forged the signature of the account holders.

vi) The cashier of the Bank who has disbursed the loan amount to the fictious person is not examined. He was a material witness to speak about the beneficiary of the alleged loan transaction.

vii) The Loan Section Officer had admitted during the cross examination that without verifying the specimen signature of Sh. Chandrashekar, he signed the loan documents on 03.07.2003. He had also admitted that he had not produced specimen signature card of Sh. Srinivasa Murthy. G.

viii) No police complaint is lodged against him alleging fake salary certificate. He has not created fake salary certificate.

ix) Regarding the allegation of transfer of his vehicle hypothecated to the Bank in favour of 3rd Party, even now the vehicle stands in his own name and he has repaid the full loan amount.

x) Regarding the allegation of obtaining sale deed by impersonation, the Bank sanctioned the loan after taking legal opinion from their panel advocate; the Officer of the Bank was also present at the time of registration and collected all original documents of title from the vendors after registration of sale deed. The Civil suit filed by Sh. Rangappa and others is still pending. The 2nd Party has collected the entire

Housing Loan amount with interest from him. Hence, no loss is caused to the Bank by the sale transaction.

17. The charge 1(a) was held not proved by the Enquiry Officer for want of supporting evidence. As regards charge 1 (b) is concerned, the 1st Party is said to have received the loan amount by stealing the term deposit receipts pertaining to four depositors and raising loans by pledging those receipts. What is established during the enquiry is, the signatures of the depositors were forged in the loan application, documents and deposit receipts. What is over looked is, the author of those forged signatures was not traced. There was no evidence to demonstrate that 1st Party received the loan amount either directly or through his Bank Account. If the 1st Party had received the amount by way of cash through the cash counter, cashier was the proper witness/eye witness to depose in this behalf; if the loan amount so raised was credited to his Bank account there ought to be documentary proof which is not brought before the Enquiry Officer. Admittedly, the charge sheet is issued subsequent to closure of the loan account as per the evidence of the 2nd Party they made good the loan account through the suspense account. During the enquiry 1st Party sought:

i) Details of the persons who deposited the amount to the suspense account.

ii) Details of the entries of the suspense account maintained in the branch.

iii) The mode of deposit of amount in the suspense account.

iv) Details of the Authority who ordered the deposit, the copy of the order from the concern person.

But these information's were not furnished which give rise to a reasonable doubt that vital evidence is suppressed by the management. For sanctioning the loan against the fixed deposit the requirements are, along with the original FD receipts loan application shall be submitted in the Branch. The sanctioning Authority shall verify the duly filled columns by the Account Holder and his signature and then sanction the loan. The sanctioned amount shall be transferred to the account of the deposit holder. The concerned Official witnesses and Manager have unequivocally admitted their omissions and lapses in sanction of the amount.

18. If really such fraudulent loan transaction took place in the Bank that would have not happened without the connivance of the concerned Bank Officials. It is surprising that except the 1st Party who is the Attender none other has faced Disciplinary Action. Despite the Enquiry Officer has noticed the irregularities and deviations on the part of the Manager and the Officer of the Bank, he has recorded his finding affirmatively on the charge 1(b) only on the basis of the superficial survey of the Management evidence. Hence, I find merit in the contention of the 1st Party that the said finding is perverse.

19. As regards charge 1(c) pertaining to production of a fake Salary Certificate is concerned, it is proved during the enquiry by the evidence of the Official of the Co-operative society that they have sanctioned term loan of Rs. 50,000/- to one Sh. Naveen T G and the 1st Party was the surety. The Salary Certificate pertaining to the 1st Party was furnished to the Bank and he authorised the Bank to deduct the instalment from his salary, he has furnished false salary particulars which is not certified by the Bank. It is the Co-operative Bank which has to be blamed if they have accepted his salary particulars as the authenticated Salary Certificate. The finding of the Enquiry Officer in recording affirmative finding to this charge cannot be found fault.

20. Regarding charge 1(d), transfer of the ownership of the vehicle which is already hypothecated to the Bank, the 1st Party continued to be the owner of the vehicle and as per B extract of the owner. However, he has signed at blank form 30, blank form no. 29, blank authorisation letter, blank sale receipt which are marked as Ex M-36 to M-39, Photostat copy of a blank non-judicial stamp paper allegedly bearing his signature is marked as Ex M-34, these documents though probablise his intention to transfer the ownership of the vehicle, the ownership is not transferred. The Bank has not suffered any financial loss from his action; he has already repaid his loan amount. The Enquiry Officer has recorded the issue has proved which is partially incorrect at the most it may be held that, he attempted to transfer the vehicle which was hypothecated to the Bank.

21. Regarding the charge 1(e), i.e., getting sale deed of the house property by impersonation. The bank sanctioned the loan after the panel advocate examined the title deeds and gave his report. The Official of the Bank was personally present at the time of registration and collected the original documents. The executants of the register sale deed are Sh. S. Rangappa and his 7 children filed the Civil Suit for setting aside the sale deed and consequential reliefs. The plaint allegation is to the effect that the sale deed was fraudulently obtained under the pretext of lending the loan amount. The Bank is arraigned as the 2nd Party in the said suit. The 1st Party has produced the certified copy of the entire order

sheet; it is placed on record. Though it is a suit filed in 2004 till date the matter is pending since the issue is sub judice, the 2nd Party could not have framed a charge of impersonation against the 1st Party workman.

22. The vehicle loan and the house loan are already cleared by the 1st Party, and from none of the misconduct alleged against the 1st Party workman there is any financial implication on the Bank. What is proved during the enquiry is, he helped his friend to avail loan from the Co-operative Bank by furnishing wrong details of his salary and attempted to transfer his vehicle which was hypothecated to the Bank. The Enquiry finding is partially perverse and without proper and judicious appreciation of the evidentiary material placed before the Enquiry Officer.

23. The Punishment order of dismissal viz a viz the allegations which I have held proved during the Enquiry i.e.,

i) Furnishing false information to a Co-operative Bank

ii) Attempt to transfer hypothecated vehicle is too harsh and disproportionate.

The Bank has not suffered any loss from the misconduct alleged against the 1st Party. They have discriminated him in imposing punishment on him alone in total disregard of the involvement of others officials of the Bank who had connived for fraudulent loan transaction. Being an Attender without Educational Qualification it cannot be his hand work to prepare the false loan documents. There is no direct or indirect evidence that he alone forged the signatures of the Account Holders. Hence, the punishment order requires the exercise of Jurisdiction of this Tribunal under section 11-A of the Industrial Dispute Act to undo the illegality inflicted on the 1st Party workman by his reinstatement.

AWARD

The reference is accepted.

The order passed by the 2nd Party in No. HO/HR&IR/D/A/12004/1242/2008-09 dated 07.05.2008, thereby dismissing the 1st Party workman from service is set aside.

The 2nd Party is directed to reinstate the 1st Party workman to his original post with continuity of service and 25% of the back wages.

(Dictated to o/s L D C, transcribed by her, corrected and signed by me on 09th July, 2019)

JUSTICE SMT. RATHNAKALA, Presiding Officer

नई दिल्ली, 5 नवम्बर, 2019

का.आ. 1936.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार मेसर्स एस.डी. शर्मा नौगांव आयरन माइन्स के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, भुवनेश्वर के पंचाट (संदर्भ संख्या 21/2005) को प्रकाशित करती है जो केन्द्रीय सरकार को 30.10.2019 को प्राप्त हुआ था।

[सं. एल-29011/18/2005-आईआर (एम)]

डी. के. हिमांशु, अवर सचिव

New Delhi, the 5th November, 2019

S.O. 1936.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 21/2005) of the Central Government Industrial Tribunal/Labour Court, Bhubaneswar now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of M/s. S.D. Sharma Naogaon Iron Mines and their workman, which was received by the Central Government on 30.10.2019.

[No. L-29011/18/2005-IR (M)]

D. K. HIMANSHU. Under Secy.

ANNEXURE

CENTRAL GOVT. INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, BHUBANESWAR

Dated : 13.08.2019

Present : B. C. RATH, Presiding Officer

I.D Case No. 21 of 2005

Shri S.D. Sharma, Proprietor M/s. S.D. Sharma Naogaon Iron Mines,
At/P.O. Barbil,Dist-Keonjhar (Orissa). …1st Party Management

-Versus-

The General Secretary, North Orissa Workers Union,
At/P/O.Barbil, Dist. Keonjhar (Orissa). …2nd Party Union.

Authorised Representatives of the parties are present. Authorised Representative of the 2nd Party Union submits that the disputant workmen are unable to attend the Tribunal at Bhubaneswar due to their financial hardship. Unless the case is heard either in Camp Court at Keonjhar or at Rourkela they are not in a position to attend and adduce their evidence. On perusal of the order sheets it is found that on the submission of the 2nd Party the case was posted earlier at Rourkela camp on different occasions. But, the 2nd Party took adjournments on those occasions. The record further reveals that this is a reference case of the year 2005 and after filing of statements by the parties and settlement of issues the case is protracting for last 10 years to take evidence of the disputant workmen. The parties to the case are found to have been playing hide and sick on the day of hearing either by remaining absent k or taking adjournments for some plea. The case has already suffered more than 60 adjournments after its institution and the 2nd Party is yet to adduce evidence despite the case was fixed for hearing in camp court at Keonjhar as well as at Rourkela . In the above back drops it cannot be ruled out that the 2nd Party Workmen might have lost their interest to prosecute their dispute.

2. The Workmen seems to have challenged their dismissal on a contention that the same was illegal due to non-compliance of the requirement of Sec.25-f of the I.D. Act.

Such a dispute cannot be adjudicated and award cannot be passed as defined U/s.2-(b) of t he Act in absence of any evidence from the side of the workmen.

3. It is pertinent to mention here that until adjudication of the dispute referred to by the authority concerned, an award cannot be made within the meaning of the award as defined under section 2(b) of the Act. There is also no provision in the Act to pass a no-dispute award or a nil award in case the disputant fails to make appearance and prosecute its claim. In that view of the matter passing of a no-dispute award or nil award for absence of the disputant/parties would be a misconception and the above position has been settled by the Hon'ble High Court of Orissa in the case between M/s.IDL Chemicals Limited –Versus- P.O, Labour Court, Sambalpur reported in 72(1991)CLT 73 and in the decision of the Callcutta High Court in the case of B.R.Bermen and Mohatta (India)Pvt. Ltd., -Versus- Seventh Industrial Tribunal,West Bengal and others (short noted in 1977 Lab. I.C (NOC)13 (CAL). It has been also held by the Hon'ble Courts that so long as the dispute remains unsettled and the proceeding came to an end without adjudication of the dispute between the parties, there is no bar under the Act whereby the Government is precluded from referring the dispute over again so that there may be an industrial adjudication as contemplated by the Act.

4. Having regard to the above facts and circumstances as well as settled principles I am constrained to dismiss the case registered on the reference of the dispute without any award and accordingly the reference is disposed of. A copy of this order be sent to the Government of India, Ministry of Labour for necessary action at their end.

Dictated and corrected by me.

B C. RATH, Presiding Officer

नई दिल्ली, 5 नवम्बर, 2019

का.आ. 1937.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार मेसर्स बोलानी ओर माइन्स, आरएमडी, सेल के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, भुवनेश्वर के पंचाट (संदर्भ संख्या 59/2014) को प्रकाशित करती है जो केन्द्रीय सरकार को 30.10.2019 को प्राप्त हुआ था।

[सं. एल-26011/5/2014-आईआर (एम)]

डी. के. हिमांशु, अवर सचिव

New Delhi, the 5th November, 2019

S.O. 1937.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 59/2014) of the Central Government Industrial Tribunal/Labour Court, Bhubaneswar now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of M/s. Bolani Ores Mines, RMD, SAIL and their workman, which was received by the Central Government on 30.10.2019.

[No. L-26011/5/2014-IR (M)]

D. K. HIMANSHU. Under Secy.

ANNEXURE

IN THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL : BHUBANESWAR

Industrial Dispute Case No. 59 of 2014

Date of passing of award 09 .10.2019

Present: Sri B. C. Rath, LL.B., Presiding Officer,
Central Government Industrial Tribunal,
Bhubaneswar.

Between:

The General Manger,
Bolani Ores Mines, RMD, SAIL,
At/P.O. Bolani, Dist-Keonjhar. …1st Party Management

-Versus-

The President,
Barbil Workers Union,
At/P.O. Bolani,District-Keonjhar.
Keonjhar. … 2nd Party Workman.

Appearance:-

For the 1st Party Management : Sri B. B. Tripathy

For the 2nd Party Workman : Mr. R. M. Latif

AWARD

The Government of India, Ministry of Labour and Employment have referred an Industrial Dispute between the above named parties for its adjudication vide its Order No.L-26011/5/2014-IR(M) dated.05.11.2014 in exercising its authority conferred under Clause(d) of sub- section (1) and sub section(2-A) of Section 10 of the Industrial Disputes Act,1947(14 of 1947) and the Schedule of the reference is as follows:-

> "Whether the demand of the Union to pay wages to hired 47 light vehicles operators /drivers at par with regular drivers/workmen is legal and justified ? If so, to what relief these operators/drivers are entitled ?"

2. The case of the 2nd Party Union as revealed from the Statement of Claim submitted by the President of the Union, in brief, is that 47 Disputant Workmen, named in the list enclosed with the reference, are directly recruited by the

1st Party Management as Drivers. They have been working for 2 to 22 years continuously and uninterruptedly under the direct control and supervision of the 1st Party Management. The Management is having departmental drivers designated as "Equipment Operators". They are placed in the categories of employees starting from S-3 to S-7 in accordance to their length of service. Such departmental drivers are getting much more higher monthly wages in comparison to the wages paid to the disputant workmen. It is the claim of the Union that the Equipment Operators /departmental drivers are doing identical work which is being done by the disputants. Though, the disputant drivers are doing the same jobs/works like that of the departmental drivers/Equipment Operators, they are getting a consolidated amount of Rs.8430/- per month irrespective of their length of service. Keeping in view the settled principles of equal pay for equal work the disputants are entitled to receive wages equivalent to the wages paid to Equipment Operators. As the Management did not pay any heed to the demand of the disputant Drivers for equal pay for equal work and when conciliation effort failed, the dispute is referred for adjudication as per the provisions of the Industrial Disputes Act.

3. In the written statement submitted by the Management the claim of the Union is refuted totally on a pleading that the disputants are not the employees of the Management and there is no relationship of employer and employee between them. It is the stand of the Management that tenders are being invited for mining activities in the mines of the Management. Accordingly, the Management issued open tender notices /Limited Tender Enquiry for mining activities and for supporting facilities for operation of light and medium vehicles at Bolani Ore Mines. In response to such tender notices several contractors participated and some successful contractors were awarded contracts. They were issued with work orders to execute their respective contracts. It is the contention of the Management that those contractors engaged their employees to execute the contract work entrusted to them. The contractors used their light and medium vehicles to execute the contract. The disputants are the drivers employed and engaged by the contactors to carry out the work orders issued to them. The disputants being the employees of those contractors are working directly under the control and supervision of their employers i.e. the contractors. In no point of time they had been appointed by the Management or they had been paid directly by the Management. It is the stand of the Management that since the disputants are not their employees or workmen question does not arise for adopting the principle of equal pay for equal work in the matter of wages paid to the disputants by their respective employer contractors. Hence, the Management has submitted for rejection of the statement of claim.

4. In view of the above pleadings of the parties the following issues have been settled for consideration.

ISSUES .

1) Is the reference maintainable in the eye of law?

2) Whether the relationship of employer and employee exists between the disputants and the Management?

3) If the disputant workmen are entitled to the wages equivalent to the wages paid to the departmental drivers/Equipment Operators of the 1st Party Management?

4) If not, to what relief the workmen are entitled to?

FINDINGS

5. The 2nd Party Union has examined two witnesses and filed documents like Copy of list of 47 drivers, the Original Account of EPF Statement of workman, Xerox copy of Pay Slip of regular driver namely Markand Mahanta, Original Annual Accounts of EPF Statement of workman, In support of their claim which are marked as Ext.1 to Ext.4/b whereas the 1st Party Management has examined one Rohit Topa Asst. Manager and relied upon the documents like Sale Tender document dated.4.8.2009, Xerox copy of Work Orders, copy showing payment of wages to the workmen, Xerox copy of Register of Employees, Xerox copy of order dated.26.11.2014 of RLC, Xerox copy of the order dated.9.1.2017, Copy of Writ Petition (C) No.1255/2017,copies of receipts issued by the Management to the Contractor and statement of P.F. and copy of Gate Pass, which are marked as Ext. A to Ext. J to refute the claim of the union.

6. **Issue No. 2:-** This issue being vital for just decision of the case it is felt necessary to give a finding on the issue first before considering other issues. As per the claim statement the disputant drivers were given appointment by the 1st Party Management. On the other hand the pleading of the Management is that the disputants are the employees of the contractors. In this regard the 2nd Party Union has not filed any document relating to engagement or appointment of the disputants by the 1st Party Management. Three of the disputants examined as WW.1 to WW.3 have identically stated in their affidavit evidence that they had been introduced to the Management by their Sarpanch and they have been working with the Management since then. They have categorically stated that the Management had not issued any letter of appointment. Their claim towards the employees of the Management is based on the EPF contribution made by the Management. There is no other document to show that they were engaged by the 1st Party Management or they have been working under the direct control and supervision of the Management or they received their wages from the said Management. It cannot be over sighted that the 1st Party Management is a public sector undertaking and it

has its own Recruitment Rules and guide lines. W.W.1 and other witnesses have admitted that the Management has its own Recruitment Rules . Being a Public Sector Company the Management is expected to make advertisement for recruitment of the disputant workmen. No such appointment notice is also filed inspite of the claim of the disputant workmen that they were appointed by the Management . Not a single scrap of paper is filed to establish the relationship of employer and employee between the parties. The EPF slips filed by the workmen are not sufficient to hold them as the employees of the 1st Party Management since under the EPF Act and Rules the Principal employer is equally liable and responsible for remittance of EPF deposits like the immediate employer of a workman. That being the position of law in the matter of EPF deposits the EPF slips filed by the workmen cannot be held sufficient to hold the disputants as employees of the Management. Law is well settled that burden lies on the workman to prove his continuous and uninterrupted engagement/employment for 240 days in a calendar year. Be that as it may, the initial burden lies on the Workmen to establish his relationship with the 1st Party Management. When the evidence of the disputed workmen is totally wanting to establish that they had ever been appointed or engaged by the 1st Party Management it can be safely held that no relationship of employee or employer exists between the parties. This issues is answered accordingly.

7. **Issue No. 2:-** Coming to the issue of equal pay for equal work it is pertinent to mention that in order to maintain parity in pay the claimant must prove that subject post occupied by him requires him to discharge equal work for equal value and sensitivity as reference post. Mere fact that subject post occupied by the claimant is in different department is in-consequential. Principle of equal pay cannot be invoked merely because subject and reference posts have same nomenclature. Pay scale varies from post to post keeping in view the degree of responsibility, reliability and confidentiality attached to the post. Further, as per the settled principle the onus of proof of parity in duty and responsibility of the post lies on the person who claims equal pay for equal work.

Keeping in view the principles noted above if the evidence of the disputants are examined it can be safely said that the regular employees of the Management are having different responsibility and accountability than that of the disputant drivers. As a settled principle for placement in regular pay scale the claimant has to be regular appointee selected on the basis of a regular process of recruitment. But, in the case at hand the disputants were neither appointed by the 1st Party Management nor they had under gone any recruitment process of the 1st Party Management . There is no evidence to show that the disputants have the qualification that are prescribed for the regular posts of the Management. The principle of equal pay for equal work is applicable only when it is shown that posts of disputants and the reference posts are entrusted with similar nature of duty and responsibility. In this regard there is no evidence on the part of the 2nd Party Union . More over , it is already held that the disputants are not the employees of the 1st Party Management. In the above back drops question of equal pay for equal work does not arise for consideration. Thus, this issue is answered against the disputants.

As the disputants are not the employees of the 1st Party Management they cannot be counted as the workmen of the said Management. As such doubt can be entertained regarding maintainability of the reference. As the disputants failed to establish that they were appointed by the 1st Party Management and they are performing duties with some responsibility and accountability like that of regular employees , they are not entitled to any relief.

For the reasons mentioned above the statement of claim merits no consideration and the same stands rejected.

The award be sent to the Ministry as per procedure for its notification.

Dictated & corrected by me.

B. C. RATH, Presiding Officer

नई दिल्ली, 5 नवम्बर, 2019

का.आ. 1938.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार मेसर्स स्टील अथॉरिटी ऑफ इण्डिया लिमिटेड के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, भुवनेश्वर के पंचाट (संदर्भ संख्या 67/2014) को प्रकाशित करती है जो केन्द्रीय सरकार को 30.10.2019 को प्राप्त हुआ था।

[सं. एल-29012/22/2014-आईआर (एम)]

डी. के. हिमांशु, अवर सचिव

New Delhi, the 5th November, 2019

S.O. 1938.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 67/2014) of the Central Government Industrial Tribunal/Labour Court, Bhubaneswar now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of M/s. Steel Authority of India Limited and their workman, which was received by the Central Government on 30.10.2019.

[No. L-29012/22/2014-IR (M)]

D. K. HIMANSHU, Under Secy.

ANNEXURE

IN THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL, BHUBANESWAR

Industrial Dispute Case No. 67 of 2014
Dated of passing of the award 31.07.2019

Present: Shri B. C. Rath, LL. B., Presiding Officer,
Central Government Industrial Tribunal, Bhubaneswar

Between:

The Managing Director, Steel Authority of India, Ltd.,
Rourkela Steel Plant, Rourkela. …First Party- Management

-Versus-

Shri Gautam Mallick,
Ex-SSW, At Village Rudrapur,
P.O. Balmukuli Hat, Dist-Jajpur,
Jajpur, (Orissa). …2nd. Party Workman/Union

Counsels:-

For the First Party Management : Sri Subrat Mishra

For the 2nd Party workman : Sri S. Dash

AWARD

The Government of India, Ministry of Labour and Employment have referred an Industrial Dispute between the above named parties for its adjudication vide its order No,L-29012/22/2014-IR(M) under Clause (d) of sub-section(1) and sub-section (2-A) of Section 10 of the Industrial Disputes Act,1947(14 of 1947) and the Schedule of the reference is as follows:—

> "Whether the leave diary produced by Sri Gautam Mallick is authentic, correct and true? If true, whether it will vitiate the enquiry proceeding , on the basis of which removal order was passed? Whether the removal from service o0f Sri Gautam Mallick w.e.f.19.1.2005 by the Management of SAIL, Rourkela on the ground of remaining absent , without proper scrutiny is legal and justified? If not, what relief the workman is entitled to?''

2. Briefly stated the claim of the 2nd Party Workman is that he was working as a semi skilled labourer in the 1st Party Management. He remained absent from his duty for certain period as he was suffering from disease of mental disorder. During that period he was under treatment in the Psychiatric Ward of Ispat General Hospital as well as in a Rehabilitation Centre ,Chend,Rourkela. The 1st Party Management initiated a departmental proceeding for his such absence and issued a charge sheet on 11.8.2003 wherein it was alleged that he remained absent from duty habitually without leave and the same was a misconduct as per clause 28(v) of the standing order. According to him the charge was misleading and defective. The departmental enquiry was initiated with malafideness to victimise him. The said domestic enquiry was conducted in a haphazard manner without following the principle of natural justice and the requirement of the standing order of the Management. He was not furnished with the documents and he was not allowed to cross examine the witnesses examined in the domestic enquiry. Inspite of his prayer the leave documents and the registers were not called for. The Officer at whose instance charge sheet was issued and Departmental Proceeding was initiated was entrusted with the duty of the Presenting Officer. A proceeding was initiated by an

authority higher to his Disciplinary Authority. The Medical Certificates obtained from the Rehabilitation Centre was not taken into consideration by the Enquiry Officer. Though, he submitted leave application on different occasions, they were not brought to the record as well as in the departmental proceeding. Thus, the domestic enquiry was not conducted in a fair and proper manner as a result of which the finding of the departmental proceeding is to be vitiated. He has also pleaded that the punishment imposed in the domestic enquiry was disproportionate to the gravity of the misconduct proved against him. Hence, prayer has been made for declaring his dismissal as illegal and unjustified and for an order of reinstatement with back wages and all service benefits.

3. The 1st Part Management has refuted his pleading and contested the claim taking a stand that the fairness of the departmental enquiry having been decided in Misc. Case No.3/2005 by the State Industrial Tribunal, Rourkela, in the matter of U/s.33(2)(b) of the I.D. Act, the issue raised by the 2nd Party Workman in this regard is set at rest. As such the order of his dismissal on ground of principle of natural justice having been violated in the domestic enquiry cannot be opened again in the reference. It is the case of the Management that the disputant workman was charge sheeted for his habitual unauthorised absence from duty and he participated in the domestic enquiry initiated for the above charge. Before issuance of charge sheet he was issued with show cause notice for his unauthorised absence. The show cause submitted by him was found unsatisfactory and as such a domestic enquiry was initiated with issuance of charge sheet. The Enquiry Officer and the Presenting Officer were duly appointed. The 2nd Party Workman was also intimated about such appointment. He was supplied with necessary documents to defend his case. He was allowed to take defence assistance through a Co-worker to defend himself in the departmental proceeding. The enquiry was conducted in his presence. He was allowed to cross examine the departmental witnesses and he was also allowed to lead the defence evidence if any. As the disputant workman did not like to adduce any evidence in support of his stand the enquiry was completed on the same day when the evidence of the department was taken. There was no violation of principle of natural justice or any provision of the standing order while conducting the domestic enquiry. Finding of the Enquiring Officer was also sent to the 2nd Party Workman on 28.5.2004 by Registered Post. As charges were established beyond any doubt and misconducts were proved, punishment of dismissal was imposed. According to the Management the workman was found guilty of misconduct for his unauthorised absence. Since he was punished on two earlier occasions for such unauthorised absence by reduction of his pay , he was dismissed from service after being held guilty in the departmental proceeding. As a dispute was pending before the 1st Party Management and the employees union in connection with some other matters, an application U/s.33(2)(b) was filed before the Tribunal at Rourkela for approval of the action of the Management taken against the disputant. The Tribunal at Rourkela vide its order dt.24.4.2008 in I.D. Misc. Case No.3/2005 had approved the action taken by the Management. It is the claim of the 1st Party Management that since dismissal of the 2nd Party workmen was in accordance with the law and it was proportionate to the misconduct committed by him , there is no scope for the Tribunal to interfere with the dismissal order of the 2nd Party workman. The 1st Party Management has made a prayer for rejection of the claim statement.

4. On the aforesaid pleadings of the parties the following issues have been settled for proper adjudication of the dispute.

ISSUES

i) Whether the reference is maintainable?

ii) Whether the leave diary produced by the workman Sri Goutam Mallick is authentic , correct and true?

iii) If true, whether it will vitiate the enquiry proceeding on the basis of which removal order was passed?

iv) Whether the removal from service of Sri Gautam Mallick with effect fom 19.1.2005 by the Management of SAIL, Rourkela on the ground of remaining absent without proper scrutiny is legal and justified?

v) If not, to what relief the workman is entitled?

FINDINGS

To substantiate its claim the 2nd Party Workman has examined himself as W.W.1 and relied upon the documents the Certified Copy of the Charge Sheet dt.8/11-8-2003,Copy of order of the appointment of Enquiry Committee, Copy of Enquiry Proceeding dated.23.4.2004,Copy of the findings of the Enquiry Committee dt.25.5.2004, Copy of order of Removal dated 19.1.2005, Original Leave Diary and Original Medical Certificates which are marked as Ext.1 to Ext.7 respectively. On the other hand the Management has examined its Asst. General Manger and relied upon the documents such as copy of charge sheet dt.11.08.2003, copy of explanation of the workman dt.18.8.2003, copy of constitution of enquiry committee vide notification dt.20.8.2003, copy of enquiry proceedings , copy of the findings of the enquiry committee dt.25.5.2004, copy of letter sent to the workman with copy of enquiry proceeding with its finding, copy of order of removal dt.19.1.2005, copy of postal receipt showing sending of removal order, copy of punishment order dt.3.4.1999, copy of punishment order dt.28.10.2002, copy of the petition filed U/s.33-2 (b) before

the Industrial Tribunal, Rourkela, copy of order dt.24.4.2008 passed by the Industrial Tribunal, Rourkela in Misc. Case No.3/2005, copy of the personal policy circular dt.3.2.1986, copy of personal policy circular dt.21.9.1992, and copy of the certified standing order of the Management which are marked as Ext. A to Ext. Q to refute the claim of the disputant.

5. **Issue No.1:-** It is pertinent to mention here that there is no serious dispute to the claim of the 1st Party Management in regard to an earlier proceeding U/s.33(2)(b) of the Act in the State Industrial Tribunal at Rourkela. It is also emerging from the pleadings and evidence of the parties that the said application U/s.33(2)(b) was preferred in the State Industrial Tribunal, Rourkela vide I.D. Misc Case No.3/2005 for approval of the order of the Management dismissing the 2nd Party Workman since at the relevant time the Government of Odisha was the appropriate Government in the matter of Steel Plant, Rourkela and the State Industrial Tribunal, Rourkela was having jurisdiction to deal with such matters. The approval order of the learned Tribunal, Rourkela has been admitted into evidence and marked as Ext. M on behalf of the 1st Party Management without any objection. It is not also in dispute that the 2nd Party Workman contested the above noted I.D. Misc Case and participated in the proceeding before the Tribunal at Rourkela. On perusal of the order of the learned Tribunal it clearly indicates that fairness of the departmental inquiry initiated against the 2nd Party was an issue in the proceeding before the Tribunal at Rourkela. The said issue was decided in favour of the Management. All the allegations regarding fairness of the departmental proceeding as raised in this reference seems to have been raised in the Misc Case before the learned Tribunal at Rourkela. But, the learned Tribunal held that in view of admission of t he 2nd Party in regard to his unauthorised absence the allegation of unfairness was having no force. It was also held by the learned Tribunal that the 2nd Party disputant participated in the enquiry along with a co-worker and he never complained before the Enquiry Officer about non-observation of principle of natural justice before the Enquiry Officer. It is also revealed from the order of the learned Tribunal that the 2nd Party Workman admitted his act of unauthorised absence from duty. He also admitted before the Enquiry Officer that he did not apply for leave for his such unauthorised absence. Taking all the above facts into consideration the learned Tribunal held that the enquiry was conducted in a fair and proper manner and having been satisfied with the compliance of the requirements as enumerated in Section.33(2)(b) of the Act, the learned Tribunal accorded approval to the action of the Management. In that view of the matter the 2nd Party Workman has a little scope to question on fairness of the departmental enquiry in the present reference. That apart it cannot be over sighted that as per the settled position of law in a proceeding U/s.33(2)(b) the scope of enquiry for the Tribunal is to find out (i) whether a proper domestic enquiry has been held in accordance with the relevant rules or standing order and principle of natural justice, (ii) whether a prima facie case for dismissal based on legal evidence adduced before the Enquiring Officer is made out and (iii) whether the employer had come to a bonafide conclusion that the employee was guilty of misconduct and his dismissal did not amount to unfair labour practice or it was not intended to victimise him. As the learned Tribunal Rourkela has approved the action of the Management dismissing the 2nd Party Workman it shall be presumed that the learned Tribunal at Rourkela must have gone through the respective pleadings and evidence of the parties and thereby it must have been satisfied that (i) a fair and proper domestic enquiry in accordance with the rules and principle of natural justice was held, (ii) a prima facie case for dismissal of the 2nd Party Workman was made out (iii) the dismissal order against him was not intended to victimise him or any unfair labour practice was adopted to dismiss him. Further, such finding of the learned Tribunal is not challenged in any higher forum. Keeping the above facts and circumstance in view the issues raised in the present reference are to be answered.

6. **Issues Nos. 2, 3 and 4:-** These issues being inter linked to each other are taken into consideration simultaneously for the sake of convenience. On a close reading of the pleadings and evidence advanced by the parties so also the contentions raised during the argument, the main issue raised by the 2nd Party Workman is that he was not given due opportunity to defend his case before the Enquiry Officer in the departmental proceeding and his documents produced before the Enquiry Officer were not taken into consideration. Had his leave diary taken into consideration, no inference about habitual absence could have been drawn in the departmental enquiry. It is his claim that leave diary maintained by the Management does not disclose that he remained absent from his duties unauthorisedly. Rather, the same reveal that he remained absent from duty with proper leave application and sanction. To strengthen his claim he has relied upon his leave diary marked as Ext.6. On a close scrutiny of the same it is apparent that the diary is a duplicate one under the custody of the 2nd Party workman. There is nothing in the evidence or in the claim statement as to the maintenance and custody of its original. Even on perusal of Ext.6 it does not disclose that the period for which he remained unauthorised absence was sanctioned by his authority.

On the other hand it is emerging from his cross examination that he did not produce the said diary before the Enquiry Officer. No reason has been assigned either in his evidence or in his pleadings for such non-production of the diary before the Enquiry Officer. Rather, it is seen that the 2nd Party Workman has filed several Medical Certificates for different purposes of his absence . It can be safely inferred from those Medical Certificates that he was very much irregular to his duties. His duplicate leave diary also reveal that there are some interpolation. There is no authentic certificate from his authority in the said leave diary. Hence, the contents therein would have not changed the fate of the workman in the departmental proceeding. More over, he admits about his absence from duty for a

long period. When such unauthorised absence is not sanctioned by the authority, the same shall be presumed to be unauthorised one.

That apart it cannot be over sighted that the allegations raised in the reference could have been raised in the Misc. Case No.3/2008. The disputant has not also challenged the finding of the learned Tribunal, Rourkela in any forum. That being the position of case it is difficult to accept that the Enquiry Officer as well as the authority of the disputant workman could not appreciate the claim of the applicant in the departmental proceeding.

7. Further, law is well settled that the jurisdiction of the Tribunal under the I.D. Act is limited to the enquiry as to whether a prima facie case has been made out by the employer against the employee or not. It is not to consider the merit of the rival contention as if it is trying a case itself. The Tribunal is not supposed to sit as an appellate authority over the finding of the enquiry officer and to re-appreciate the evidence for itself unless on the face of the enquiry record the finding was perverse to the evidence led before the enquiry officer . Similarly, it is well settled that the assessment in a domestic enquiry is not required to be made by applying the same yard stick as a Civil Court would do when a lis is brought before it. Law of Evidence is not applicable to a proceeding in a domestic enquiry though principle of fairness are to apply. Guilty of the delinquent is not required to be established beyond reasonable doubt. The commission of misconduct is to be inferred from pre-ponderance of probability. In the above angles if the evidence of the disputant is taken into consideration, in my considered view there is no scope to hold a different view than the view taken in the earlier order arising out of Misc. Case No.3/2005. Further, the production of duplicate leave diary , whose authenticity is apparently wanting is also no way change the fate of the enquiry proceeding.

8. Undoubtedly the learned Tribunal at Rourkela having jurisdiction over the dispute earlier had looked into the question of fairness of the departmental enquiry and having been satisfied that there was no infirmity in such departmental proceeding as well as in the finding of the Enquiring Officer it gave approval to the action of the Management in dismissing the 2nd Party Workman. There is no serious dispute that so far as the fairness of the depart- mental enquiry is concerned the Tribunal has identical authority in the matter U/s.33(2)(b) as well as in the reference U/s.10 read with Section.2-A of the Act. In both the matters the Tribunal cannot sit as an appellate authority to the finding of the Enquiring Officer. Therefore, the allegation raised in the claim statement as well as in the evidence of the disputant that he was not charge sheeted properly or he was not given due opportunity to defend himself in the domestic enquiry or he was prejudiced on account of the charge sheeting Officer being appointed as Presenting Officer cannot be looked into again in this reference as fairness of the departmental enquiry is scrutinised and examined by the learned Tribunal, Rourkela in a proceeding U/s.33(2)(b) of the Act. The finding of the said Tribunal is to be accepted in the present proceeding so far the fairness and finding of the departmental enquiry is concerned. For the reasons and discussions made above it can be safely said that the issues are answered against the disputant.

9. Now coming to the other issues involving maintainability of the reference and the relief to which the disputant is entitled to it may be stated here that scope of jurisdiction of an Industrial Tribunal U/s.33(2)(b) is limited than its jurisdiction U/s.10 and 11-A of the Act. In an application U/s.33 the Tribunal has no jurisdiction to consider whether the punishment imposed to the employee is harassed or excessive or disproportionate to the gravity of misconduct. Similarly under the said provision the Tribunal can not substitute another punishment. On the other hand the power of the Industrial Tribunal U/s.10 Sub clause (1) Sub Clause(d) read with sec.11-A is quite extensive. It has the power to interfere with the punishment imposed by the employer. Hence, the contention of the Management that keeping in view the order passed in I.D. Misc. Case No.3/2005 the present reference is not maintainable does not hold good.

So far the punishment imposed by the employer is concerned it is not in dispute that clause 28 of the standing order of the Management provides that major punishment like dismissal can be imposed for a misconduct of unauthorised absence. In the case at hand the disputant is stated to be unauthorised absence for a period of 108 days on different spells. It is also emerging from the pleading and evidence of the Management that he was punished on two earlier occasions in the departmental proceeding for his such unauthorised absence and his basic pay was reduced . In that view of the matter the punishment of dismissal on charge of habitual unauthorised absentee for a period of 108 days cannot be said shockingly disproportionate to the gravity of the misconduct committed by the disputant. Therefore, I am not inclined to interfere in the finding and final decision of the Disciplinary Authority.

Accordingly, the statement of claim filed by the 2nd Party Workman has no merit for consideration and the same stands dismissed. The award may be notified as per the rules and copy of the same be supplied to the parties after its notification.

Dictated & corrected by me.

B. C. RATH, Presiding Officer

नई दिल्ली, 5 नवम्बर, 2019

का.आ. 1939.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार मेसर्स अरूण उद्योग एवं अन्य के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, भुवनेश्वर के पंचाट (संदर्भ संख्या 88/2001) को प्रकाशित करती है जो केन्द्रीय सरकार को 30.10.2019 को प्राप्त हुआ था।

[सं. एल-29012/5/88-डी.III (बी)]

डी. के. हिमांशु, अवर सचिव

New Delhi, the 5th November, 2019

S.O. 1939.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 88/2001) of the Central Government Industrial Tribunal/Labour Court, Bhubaneswar now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of M/s. Arun Udyoga and other and their workman, which was received by the Central Government on 30.10.2019.

[No. L-29012/5/88-D.III (B)]

D. K. HIMANSHU. Under Secy.

ANNEXURE

IN THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL:BHUBANESWAR

Industrial Dispute Case No. 88 of 2001

Date of passing of award 04.09.2019

Present: Sri B. C. Rath, LL.B., Presiding Officer,
Central Government Industrial Tribunal,
Bhubaneswar.

Between:

1) The Managing Partner,
M/s. Arun Udyoga, Chhapolia,
P.O. Bhadrak, District-Balasore, (Odisha).

2) Ferrow Alloys Corporation,
Laxmi Bhaban (Kuanas),
Bhadrak …1st Party Managements

-Versus-

Sri Suresh Kumar Sarangi,
Supervisor of M/s. Arun Udyog,
Kathapal Chromite Mines of FACOR,
P.O. Kalaringatta, Dist. Cuttack (Pin-755028),
C/o. Gopinath Sarangi,
At-Matiapara, P.O. Badasankha,
Near Trilochan School, Puri. … 2nd Party Workman

Appearance:-

For the 1st Party Management : Sri B. Panda

For the 2nd Party Workman : Sri Subrat Mishra

AWARD

The award is directed against the reference made by the Government of India Ministry of Labour in exercise of its authority conferred under clause (d) of sub section(1) and sub section (2-A) of Sec.10 of the Industrial Disputes Act,1947(14 of 1947) (hereinafter referred to as "the Act") in the event of an industrial dispute arising between the parties noted above for its adjudication vide Order No.L-29012/5/88-D.III(B) dated 14.2.1988 and the terms of reference is :-

> "Whether the action of the Management of M/s. Arun Udyoga(Raising Contractor of M/s. FACOR in refusing employment w.e.f. 10.9.1987 and non-payment of wages from June,1987 till 9.9.87 to Shri S. K. Sarangi, Supervisor is lawful and justified. If not, what relief the workman is entitled to ?"

2. The case of the 2nd Party workman as emerging from his statement of claim is that he was appointed as a 'Supervisor 'by the 1st Party Management No.1 i.e. M/s. Arun Udayag with effect from 23.1.1981. The 1st Party Management No.1 is a raising contractor of 1st Party Management No.2 M/s. FAKAR. While he was in the job of 1st Party Management No.1 he was issued with a letter of appointment on 20.6.1986 to work as in-charge of Kathapal Chromite Mines with a consolidated salary of Rs.500/- per month. On being directed by the Management he joined at Kathapal Chromite Mines as Site-in-charge with effect from 23.6.1986. According to him he was performing his duty with all sincerity and honesty to the satisfaction of his authority from the day of his initial appointment in the establishment of the Management No.1. On 24.11.1986 he was again transferred and posted as in-charge of Ostapal Mines at Ostapal. He availed leave from 20.6.1987 to 30.6.1987 for his marriage. After availing leave when he resumed his duty on 1..7.1987 he was threatened and forced to join in Jugal Transport Company situated at Boula. But, he refused to comply the direction of the Management and when he insisted to regularize his service, the Management did not allow him to discharge his duty at Ostapal Mines. It is his claim that he used to perform different nature of jobs like keeping attendance and wage slips of engaged labourers , maintining accounts of the site works , keeping records of loading and unloading works etc. as "Supervisor" and other assigned duties as per the instruction of his higher authority. At times, he used to work over time. But, the Management did not provide him over time wages as well as other benefits like Bonus and leave encashment benefits. According to him when he was refused employment on 9.9.1987, he approached the authority of the 1st Party Management for his employment. As no attention was given to his request for his engagement he was forced to place his grievance before the A.L.C.(Central)Bhubaneswar. It is his further claim that on the day of refusal of employment he was getting Rs.550/- per month towards his wage. He worked continuously and uninterruptedly for more than 240 days in a calendar year from the date of his initial appointment on 23.1.1981. When he was refused employment he was neither given notice pay nor rehabilitation compensation . There were more than 100 employees under the Management No.1 at the time of his disengagement. As his retrenchment/termination in shape of refusal of employment was without compliance of the provisions as enumerated in Sec.25(f) and 25(n) the same was illegal and not sustainable in the eye of law. Hence, he has made a prayer for his reinstatement along with all back wages and service benefits.

3. The 1st Party Management Contractor Arun Udayag has resisted the claim taking a stand that the 2nd Party was appointed with effect from 1.7.1986 and he was posted at Kathapal Chromite Mines.It has denied the employment of the 2nd Party with effect from 23..1.1981.The 2nd Party being appointed as a Supervisor was not a 'Workman' as defined in the Act and as such the reference is not maintainable in the eye of law. According to the said Management the raising work taken under the Management No.2 was completed on 30.6.1987. Hence, the 2nd Party workman was transferred to Baula Chromite Mines in the district of Keonjhar by an office order dt.27.5.1987 and he was directed to join there by 1.6.1987. Instead of joining there the 2nd Party workman remained absent unauthorizedly from his new assignment. On the other hand he continued to stay at Kathapal Chromite Mines and forcibly signed the Attendance Register by giving threate to the staff of the Management. As the 2nd Party workman did not report to his duty on 1.6.1987 at Baula Chromite Mines and he had voluntarily abandoned his job there was no requirement to comply the provisions of Sec.25(f) or 25(n) of the Act. As the 2nd Party had left his employment on his own volition there was no scope of refusal of employment to him or his retrenchment by the 1st Party Management. Thus the Management Contractor has disowned any liability for reinstatement and back wages benefits of the 2nd Party workman.

4. The 1st Party Management No.2 the principal employer has taken a stand that the 2nd Party was never given any appointment directly or indirectly and there was no relationship of employer and employee between them. There were various contractors engaged for the mining purposes and the Management No.2 was one of the contractors during the relevant period and he was entrusted with raising works at Kathapal and other site areas. As the 2nd Party was neither appointed nor terminated by it, no relief is maintainable against it. All the dues of the contractors were cleared up and no allegation was ever made for non-payment of wages to contract labourers, the 1st Party Management has no obligation to fulfill or to comply the demand of the 2nd Party workman. The Management FAKOR is not a necessary party to the reference. Hence, prayer is made to dismiss the claim statement against the principal employer.

5. On the aforesaid pleadings of the parties the following issues have been settled for proper adjudication of the dispute.

ISSUES

1) If the reference is maintainable?

2) If the 2nd Party workman Sri S.K.Sarangi is not a "workman" within the meaning of the I.D. Act?

3) If the case of the 1st Party Management that Sri S.K. Sarangi was not refused employment as alleged by the 2nd Party and that he abandoned his employment of his own is true ?

4) If the allegation of the 2nd Party that there was nonpayment of wages to him from June,1987 till 9.9.1987 is true?

5) To what relief, if any, the 2nd Party workman is entitled to?

6. In order to establish his claim the 2nd Party workman has examined himself and filed the letter dt.1.8.1983 issued in his favour by the 1`st Party Mangement in regard to the job performed by him , a certificate dt.31.12.1984 allegedly issued by the 1st Party contractor, appointment letter as in-charge of Kathapal Chromite Mines and Xerox copy of transfer and posting letter as incharge of Ostapal Mines, which are marked as Exts.1 to 4. To refute the claim of the 2nd Party the 1ST Party Management No.1 has also examined its Asst. Manager and filed documents like Notice issued by the ALC(C)Bhubaneswar to the disputant, Complaint filed by the 2nd Party workman before the ALC(C),Bhubaneswar, Letter of harassment of the workman,Xerox copy of transfer order of the 2nd Party workman, Xerox copy of certification of Registration in Form No. II issued by Govt. of India,copies of norms and process adopted by 1st Party Management No. 2 which are marked as Ext. A to Ext. F. The Management No.2 has not preferred to adduce any evidence in the case.

FINDINGS

7. Issue Nos.1 and 2:- Since these issues are interlinked to each other, they are taken together for consideration for the sake of convenience. Coming to the issue regarding the maintainability of the reference it may be stated here that there is no serious dispute to the claim of the 2nd Party except the date of initial appointment, that he was working as in-charge at Kathapal as well as in charge of Ostapal Mines under the employment of Management No.1. Thus there was existence of direct relationship of employer and employee between the 2nd Party workman and the Management No.1. It is not disputed that Management No.1 was one of the raising contractors under Management No.2 and the 2nd Party was discharging his duty being an employee of the Management No.1 in the mining site of Management No.2. As such it can be safely inferred that the Management No.1 is the principal employer in regard to 2nd Party workman. It is also the contention of the 1st Party Managements that the disputant 2nd Party does not come under the purview of the workman as he was appointed as a Supervisor. He was discharging the duties of Supervisory nature as such the Tribunal has no jurisdiction to adjudicate the dispute raised by an employee engaged in supervisory work. Law is well settled that it is the nature of duty and not the designation which determines as to whether an employee is a workman. (Sunita Bhatsaraj –Versus- Karnatak Bank Ltd.(1999)3 LLM 497, Bombay). In the case at hand the evidence of the 2nd Party reveals that he was keeping the attendance of labourers, maintaining their Wage Register etc. This part of his evidence is not seriously challenged by the Managements. The Management has not produced any document or official records to establish or claim that the nature of job of the disputant was supervisory or managerial one. In absence of any evidence on the part of the Management, the version of the workman is to be accepted. The disputant was maintaining the Attendance Register of Labourers engaged in the Mines ,Wage Register or Payment Register, Statements of expenditure etc. These jobs are found to be clerical in nature .Therefore, the disputant is found to be a 'workman' as defined in the Act. A dispute has been raised by the 2nd Party that he was refused employment with effect from 10.9.1987 whereas the Management No.1 refutes the claim taking a stand that the 2nd Party had abandoned his job on his own volition. Hence, there exists a dispute relating to the service condition of the 2nd Party workman under the employment of Management No.1. In that view of the matters there seems to be an employer and employee relationship between the disputant 2nd Party and Management No.1 whereas the Management No.2 is the principal employer . There was a dispute between the parties if the disputant had voluntarily abandoned his service or he was terminated being refused employment. That apart the disputant being found workman has raised the dispute. Therefore, the reference is maintainable in the eye of law and these issue are answered in favour of the disputant 2nd Party Workman.

8. Issue No.3:- As per the pleadings of the parties there is no serious controversy regarding engagement of the disputant by the Management No.1. There is also no dispute that the Management No.1 Arun Udayag was one of the raising contractors under the Management No.2 . Thus the Management No.1 is found to be the immediate employer of

the workman whereas the Management No.2 seems to be the principal employer. The Management No.2 claims that the disputant was appointed in the month of June, 1986 and he left his job on his own volition in the month of May. Having worked for less than 240 days in a calendar year and having left the job on his own volition, there was no need of compliance of the provisions of Section.25(f) or Section 25(n) of the Act. Undisputedly the initial burden lies on the disputant to prove his employment for more than 240 days continuously and uninterruptedly in a calendar year preceding to the alleged retrenchment. In the above back drops if the oral testimony of the 2nd Party is examined along with documents relied upon by him, it is found that the assertions of the Management No.2 in regard to period of engagement of the disputant is not acceptable. If the oral testimony of the disputant is taken into consideration along with Exts.1,2,3 and Ext.C (which is filed by the Management) it is emerging that the disputant was working under the Management No.2 in the year 1981 before he was appointed and posted as Kathapal Mines in-charge under Ext.3. The Ext.D, which is filed by the Management No.2 appears to be the dispute raised by the 2nd Party at the first instance before the Labour Machinery in regard to non-payment of his wages and bonus in between financial year 1980-1981 to 1985-1986. From this piece of document it can be inferred that the disputant was in employment of the Management No.1 from the year 1981. Had he not been under employment of 1st Party Management during the period 1981 to 1986 he could lnot have raised such dispute before the Labour Machinery .Therefore, it can be safely held that the disputant was in employment of 1st Party Management No.1 from the year 1981 and he seems to have worked more than 240 days in each calendar year till he was alleged either to have been refused employment or voluntarily abandoned his employment in the year 1987.

9. The second point of controversy is whether the workman was refused employment from 9.9.1987 or he voluntarily abandoned his job when he was transferred and posted at Baula Mines. The evidence of the Management is that the workman did not join when he was transferred vide Ext.D to Baula Mines and asked to report there on 1.7.1987. On the other hand it is the oral testimony of the 2nd Party Workman that he was threatened and forced to join Krishna Das Agarwal's Transport at Boula Mines and when he refused to work under a new employer he was refused employment from 9.9.1987. As it is already established that the disputant Workman was in the job of Management No.2 and the Management No.2 pleads that the disputant had quit the job on his own volition, the burden of proof lies on the Management to establish the same. In this regard there is no record or document except oral evidence of M.W.1 to establish that the disputant did join in his new place of posting and quit the job on his own volition. When the disputant had worked for more than six years in the organization of Management No.2, it was expected that the workman must have been issued show cause for his unauthorized absence before arriving at a conclusion that he had left the job at his own volition. Admittedly, no departmental action was taken against the Workman for his alleged unauthorized absence from his new posting. No notice or show cause was also issued to him in that regard. Though the Management No.2 claims transfer and posting of the 2nd Party at Boula Mines w.e.f. 1.7.1987 vide Ext.D and he did not report to his duty, the scrutiny of Ext.D does not disclose that such order was served on the 2nd Party Workman. M.W.1 does not seem to have any personal knowledge on service of Ext.D on the disputant. Hence it is difficult to accept the version of the Managements. As the Management No.2 has failed to discharge his burden in regard to abandonment of the job by the workman, it has to be concluded that he was refused employment. Refusal of such employment amounts to termination or retrenchment. Admittedly, the workman was not given any notice or notice pay before refusal of such employment. He was not given rehabilitation compensation. It is not seriously disputed that there were more than 100 workmen in the organization of the Management. Provision of Section 25(n) does not seem to have been complied before the refusal of employment to the 2nd Party disputant. In the above facts and circumstance refusal of employment to disputant was undoubtedly illegal and unjustified because of noncompliance of provision of Section 25(n). Accordingly this issue is answered against the Management.

10. Issue No.4:- It is alleged by the 2nd Party that he was not paid wages from June,1987 till he was refused employment. In this regard the dispute raised by the workman by his correspondences can be taken into consideration. The said correspondence is filed by none else than the Management No.2. Ext.C, which is filed by the Management No.2, does not disclose payment of wages to the disputant from July, onwards. That being the evidence on record the 2nd Party appears to have not received his wages from July, onwards till he was refused employment.

As the workman was refused employment without compliance of the provisions of Section 25(f) of the Act, his termination/retrenchment was illegal. Now coming to the point of relief to which the disputant is entitled to, it is seen that the dispute relates to the year 1987 and in the mean while 32 years have been elapsed. The disputant has already attained the age of superannuation on being attaining the age of 60 years. Hence, no relief of reinstatement can be granted in the case. However, considering the illegality committed by the Management in refusing employment to the disputant despite he worked for more than six years, the quantum of wages paid to the disputant at the time of his alleged retrenchment and the mental harassment/agony suffered by the workman for last 30 years due to his such

alleged retrenchment and the expenses likely to be incurred by the disputant in prosecuting the dispute for last 30 years it is felt just and appropriate to award Rs.10,00,000/- as compensation to the disputant in lieu of his reinstatement with back wages.

11. Accordingly the Management is directed to make payment of the compensation of Rs.10,00,000/- to the disputant within two months of the publication of the award failing which the disputant is entitled to 8% interest per annum on the amount with effect from the date of award.

The reference is answered accordingly.

Dictated and corrected by me.

B. C. RATH, Presiding Officer

नई दिल्ली, 5 नवम्बर, 2019

का.आ. 1940.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार मेसर्स एयरपोर्ट अथॉरिटी ऑफ इण्डिया के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, कोलकाता के पंचाट (संदर्भ संख्या 34/2015) को प्रकाशित करती है जो केन्द्रीय सरकार को 28.10.2019 को प्राप्त हुआ था।

[सं. एल-11011/6/2015-आईआर (एम)]

डी. के. हिमांशु, अवर सचिव

New Delhi, the 5th November, 2019

S.O. 1940.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 34/2015) of the Central Government Industrial Tribunal/Labour Court, Kolkata now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of M/s. Airport Authority of India and their workman, which was received by the Central Government on 28.10.2019.

[No. L-11011/6/2015-IR (M)]

D. K. HIMANSHU, Under Secy.

ANNEXURE

CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL AT KOLKATA

Reference No. 34 of 2015

Parties: Employers in relation to the management of Airport Authority of India

AND

Their workmen

Present: Justice Ravindra Nath Mishra, Presiding Officer

Appearance:

On behalf of the Management : Mr. S. K. Karmakar, learned counsel for Airport Authority of India

Mr. D. K. Mookerjee, learned counsel for Inter State Security Agency

On behalf of the Workmen : None

State: West Bengal. Industry: Civil Aviation

Dated: 1st October , 2019

AWARD

By Order No. L-12011/6/2015-IR(M) dated 05.06.2015 the Government of India, Ministry of Labour in exercise of its powers under Section 10(1)(d) and (2A) of the industrial Disputes Act, 1947 referred the following dispute to this Tribunal for adjudication:

"(1) Whether the action of the management of M/s Interstate Security Agency, contractor of Airport Authority of India is justified in termination of service of 24 no. of contractual workmen working as Bird Chasers is legal and/or justified? If not, what relief the workmen are entitled to? (2) Whether the demand of Union for alternative job opportunity through contractor awarded by AAI is justified for the livelihood of poor workmen is valid in the eyes of law? If not, relief the workmen are entitled to?

2. When the case was taken up for hearing today, none appeared for the union, though learned counsel for M/s. S & IB Services Pvt. Ltd. and M/s. Inter State Security Agency were present. It transpires from record that this reference is pending in this Tribunal since 24.06.2015 and the union entered appearance through its learned counsel, but the union did not file statement of claim, nor took any step to proceed with the matter inspite of sufficient opportunity. Learned counsel for both the management submitted that since the union has not filed statement of claim, managements have nothing to answer and prayed for disposal of the case by passing an Award. Union is found absent since 10.07.2018, i.e., on six consecutive dates.

3. On consideration of the facts and circumstances of the case, it appears that the union has no grievance at present in respect of termination of the 24 concerned workmen, as mentioned in the order of reference. Therefore, there exists no dispute for adjudication.

4. Therefore, the reference is disposed of accordingly.

Justice RAVINDRA NATH MISHRA, Presiding Officer

Dated, Kolkata,
The 1st October, 2019

नई दिल्ली, 5 नवम्बर, 2019

का.आ. 1941.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार मेसर्स भारतीय जीवन बीमा निगम के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय-2, नई दिल्ली के पंचाट (संदर्भ संख्या 87/2016) को प्रकाशित करती है जो केन्द्रीय सरकार को 30.10.2019 को प्राप्त हुआ था।

[सं. एल-17011/2/2016-आईआर (एम)]

डी. के. हिमांशु, अवर सचिव

New Delhi, the 5th November, 2019

S.O. 1941.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 87/2016) of the Central Government Industrial Tribunal/Labour Court-2, New Delhi now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of M/s. Life Insurance Corporation of India and their workman, which was received by the Central Government on 30.10.2019.

[No. L-17011/2/2016-IR (M)]

D. K. HIMANSHU, Under Secy.

ANNEXURE

CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL CUM LABOUR COURT No. 2: NEW DELHI

PRESENT : SMT. PRANITA MOHANTY, Presiding Officer, CGIT-cum-Labour Court-II, New Delhi

INDUSTRIAL DISPUTE CASE No. 87/2016

Date of Passing Award : 25th September,2019

Between :-

Smt. Sarita,
Represented by President,
Bhartiya Sharmik Union (3254),
B-58/85, Rama Road,
New Delhi 110015. …Workman

Versus

The Senior Manager,
Delhi Division-III,
Life Insurance Corporation of India,
Jeevan Pravah Building,
District Centre,
Janakpuri,
New Delhi 110058. … Management

Appearances :-

Shri Hari Ram Tiwari, A/R For the Workman

Shri Rajeev Katyani, A/R For the Management

AWARD

The Government of India, Ministry of Labour vide letter No. L-17011/2/2016/IR(M) dated 28.11.2016 has referred the present dispute between the workman/claimant Smt. Sarita and the Management of LIC, to this Tribunal under clause (d) of sub-section (1) and sub-section (2A) of Section 10 of the Industrial Disputes Act, 1947(in short the Act) for adjudication to the following effect :-

> 'Whether the action of the management of Life Insurance Corporation of India in terminating the services of Smt. Sarita working as a probationary Development Officer on 1-1-2016 is fair and legal ? If not, to what relief the workman is entitled to and from which date ?'

2. Both parties were put to notice and the claimant filed statement of claim with the averments that she was appointed by the Management on 2/7/2013 after having been recruited, as a general candidate, in the online test conducted by the Management and since then she had been working as Probationary Development Officer (PDO). His designation as PDO was just on paper but there was nothing in practical as the Management was taking work of clerk/daftry/storekeeper etc. It is pleaded that Branch Manager Shri Suresh Kumar, Assistant Manager Pradeep Kapoor and SBI/Dos Sudhir Sharma, Sr.Divisional Manager Mrs. Manju Baggar alongwith some other anti social elements were involved in torture, harassment misbehaviour and insult to the workman on several occasions and in connivance with vendor Mr.Kapil, they cheated her of Rs.15.34 lacs and they were keeping revengeful attitude against the claimant. The workman had made complaints but the Management concealed the matter. The workman had taken leave w.e.f.2/12/2015 to 13/12/2015 with the permission and intimation to the Management on the occasion of her marriage and she resumed her duty on 14/12/2015. But, the Management did not allow her to resume duty and terminated her services without any reason and without giving notice and payment, on 1/1/2016. Being aggrieved, she registered FIR No.0247 dt.9/5/20165 at PS Dwarka North under Section 354/506 IPC. She had also sent demand notices dated 16/1/2016, 3/2/2016 and 6/3/2016 but to no response. Conciliation proceedings were initiated but to no avail. The workman is unemployed since the date of her illegal termination and is dependent on her husband and family members. She has prayed for reinstatement into service with full back wages, continuity of services alongwith all consequential benefits.

3- The statement of claim has been resisted by the Management who filed written statement and took preliminary objections that the claimant who was working as Probationary Development Officer is not a workman under Section 2(S)

of the Act. The claimant is guilty of suppressing material facts from the Court. While denying the allegations of the claimant that her designation as P:DO was only for showing on paper & that she was doing the work of clerk/daftry or storekeeper etc., it is stated that job profile of the workman was recruiting agents, motivational meeting of agents, training of agents, marketing job, moving in the fields, meeting clients and all other duties & obligations as mentioned in clause 5-A of her appointment letter. While denying her allegations that the Branch Manager and other Officers used to harass & misbehave with her or they were revengeful against her, it is alleged that claimant was given reasonable opportunities to complete her targets but her performance was never satisfactory; her performance was reviewed regularly by the Branch and Divisional authorities in meetings orally and in writing vide number of letters dated 15/5/2014, 2/6/2014, 16/6/2014, 2/7/2014, 31/7/2014, 3/9/2014, 7/10/2014, 4/11/2014, 2/12/2014, 17/12/2014, 5/1/15, 17/1/15, 6/2/2015, 2/3/2015, 16/3/15, 31/3/15, 20/4/15, 3/6/15, 1/8/15, 25/8/15, 1/10/15, 17/10/15, 17/11/15 and 6/12/2015 and 15/12/2015 and also review letters dated 24/11/2014 and 19/1/2015. Even after several extensions upto a period of 12 months (maximum permissible as per rules), the claimant failed to achieve the bench marks for confirmation and hence termination letter dated 1/1/2016 was issued to the claimant as per clause (2) of the appointment letter. Action of the Management is not against the principle of natural justice. Prayer has been made for rejection of the claim petition with costs.

4- The workman/claimant filed rejoinder, reiterating her own case as set up in the statement of claim and denied the allegations of the Management.

5- Vide order dated 13/6/2017 my learned Predecessor framed following issues and parties were called upon to lead their evidence :-

1) Whether Smt. Sarita working as a Probationary Development Officer was workman under Section 2(s) of the ID Act, 1947 ? If so, its effect ?

2) Whether the action of the management of Life Insurance Corporation in terminating the services of Smt. Sarita on 1/1/2016 is fair and legal ? If so, its effect ?

3) If not, to what relief the workman is entitled to and from which date ?

6- The workman /claimant examined herself as WW1 and led evidence by way of affidavit Ex.WW1/A. She placed reliance on documents Ex.WW1/1 to Ex.WW1/14. On the other hand, Management examined Smt. Nirmala Menon, A.O.(Sales) who filed her affidavit Ex.MW1/A and placed reliance on documents Ex.MW1/1 to Ex.MW1/4 (colly.).

7- I have heard arguments from A/Rs of the parties and have also gone through the records carefully. My findings on the above issues are as follows.

ISSUE No. 1 :-

8- In order to ascertain whether the workman/claimant herein falls within the definition of "workman" as provided in section 2(s) of the Act, it would be expedient to have a glance on definition of the term 'workman', contained in section 2(s) of the Act. For sake of convenience, definition of term 'workman' is reproduced thus:

"2(s) Workman means any person (including an apprentice) employed in any industry to do any manual, unskilled, technical, operational, clerical or supervisory work for hire or reward, whether the terms of employment be express or implied, and for the purpose of any proceeding under this Act in relation to an industrial dispute includes any such person who has been dismissed, discharged or retrenched in connection with, or as a consequence of that dispute, or whose dismissal, discharge or retrenchment has led to that dispute, but does not include any such person-

(i) Who is subject to the Air Force Act, 1950 (45 of 1950), or the Army Act 1950(46 of 1950) or the Navy Act, 1957 (62 of 1957), or

(ii) Who is employed in the police service or as an officer or other employee of a prison , or

(iii) Who is, employed mainly in a managerial or administrative capacity, or

(iv) Who, being employed in a supervisory capacity, draws wages exceeding one thousand six hundred rupees per mensem or exercises, either by the nature of the duties attached to the office or by reason of the powers vested in him, functions mainly of a managerial nature".

9. The first part of the definition gives statutory meaning of the term 'workman'. This part of the definition determines a workman by reference to a person (including an apprentice) employed in an "industry" to do any manual, unskilled, skilled, technical, operational, clerical or supervisory work for hire or reward. This part determines what a "workman" means. The second part is designed to include something more in what the term primarily denotes. By this part of the definition, person (i) who have been dismissed, discharged or retrenched in connection with an industrial

dispute, or (ii) whose dismissal, discharge or retrenchment has lead to an industrial dispute, for the purpose of any proceeding under the Act in relation to such industrial dispute, have been included in the definition of "workman". This part gives extended connotation to the expression "workman". The third part specifically excluded the categories of persons specified in clauses (i) to (iv) of this sub section. The third part connotes that even if a person satisfies the requirements of any of the first two parts but if he falls in any of the four categories in the third part, he shall be excluded from the definition of 'workman'. Not only the persons who are actually employed in an industry but also those who have been discharged, dismissed or retrenched in connection with or as a consequence of an industrial dispute, and whose dismissal, discharge or retrenchment has lead to that dispute, would fall within the ambit of the definition. In other words, the second category of persons included in the definition would fall in the ambit of the definition, only for the purpose of any proceedings under the Act in relation to an industrial dispute and for no other purposes. Therefore, date of reference is relevant and in case a person falls within the definition of workman on that day, the Tribunal would be vested with jurisdiction to entertain it and the jurisdiction would not cease merely because subsequently the workman ceases to be workman.

10. For an employee in an industry to be a "workman" under this definition, it is manifest that he must be employed to do skilled or unskilled manual work, supervisory work, technical work or clerical work. If the work done by an employee is not of such a nature, he would not be a workman. The specification of the four types of work obviously is intended to lay down that an employee is to become a workman only if he is employed to do work of one of those types, while there may be employees who, not doing any such work, would be out of the scope of the word 'workman', without having resort to the exceptions. It cannot be held that every employee of an industry was to be a workman except those mentioned in the four exceptions as in the case these four classifications need not have been mentioned in the definition and a workman could have been defined as a person employed in an industry except in cases where he was covered by one of the exceptions.

11. In cases where an employee is employed to do purely skilled or unskilled manual work, or supervisory work or technical work or clerical work there would be no difficulty in holding him to be a workman under the appropriate classification. Frequently, however, an employee is required to do more than one kind of work. In such cases, it would be necessary to determine under which classification he will fall for the purpose of finding out whether he does not go out of the definition of 'workman' under the exceptions. The principle is now well settled that, for this purpose, a workman must be held to be employed to do that work which is the main work he is required to do even though he may incidentally doing other type of work.

12- It is also well settled that in order to find out as to whether a person was/is performing the work of supervisory or managerial in nature, the dominant purpose of the employment of the person concerned should be taken into consideration and certain additional duties performed by him should be ignored while determining the status and character of the person. Since the objection regarding the status of the workman being employed in supervisory capacity has been taken by the management, as such the onus to prove this fact is upon the management. It was imperative for the management to adduce cogent evidence to prove the specific nature of duty regarding supervisory or managerial work of the workman.

13. In view of the legal position discussed above, it would be worthwhile to refer to the oral as well as documentary evidence adduced on record by the parties. Except for the bald statement that the claimant was doing the work of clerk/daftry/ storekeeper etc., she has not adduced any cogent evidence to substantiate the same. There is no dispute that the claimant was initially appointed as Apprentice Development Officer vide appointment letter (dated 21/6/2013) Ex.WW1/M-1 and after her training, she was appointed as Probationary Development Officer vide letter Ex.MW1/1 w.e.f. 1/1/2014. The workman/claimant has conceded in her cross examination that she had received the appointment letter Ex.WW1/M-1 as well as appointment letter dated 1/1/2014 from the Management. Duties and obligations which the workman/claimant was to discharge have been detailed in para 5 of the appointment letter Ex.MW1/1 and for the sake of convenience, the same are reproduced hereunder :-

5. **DUTIES & OBLIGATIONS** :-

A) Your duties as a Development Officer shall be :

i) To develop & increase the production of Life Insurance business in a planned way as far as may be practicable in the area that may be allotted to you or in which you are allowed to work from time to time through the agents placed under your supervision by the Corporation.

ii) To guide, supervise and direct the activities of agents placed under your supervision by the Corporation

iii) To introduce suitable persons to the Corporation for appointment as new Agents**.**

iv) To act generally in such a way as to activise existing Agents and motivate new Agents, so as to develop a stable agency force.

v) ……..

vi) To carry out the investigation of claims, revival of lapsed policies and liaison work in connection with the Salary Savings Scheme business.

vii) To perform such other duties as may be entrusted or assigned to you from time to time.

It is apparent from aforesaid clause 5 of the appointment letter Ex.MW1/1 that job profile of the claimant was to recruit agents, to hold motivational meeting of agents, training of agents, marketing jobs etc. This goes to show that the duties of the claimant as Probationary Officer were of managerial and supervisory nature. As such, to my mind, the claimant herein does not fall within the definition of "workman" as provided under Section 2(s) of the Act. It would not be out of place to mention here that in the case of **Chauharya Tripathi & others Versus LIC of India and others, Civil Appeal Nos. 5690-5691 of 2010 (decided on 11/3/2015),** Division Bench of Hon'ble the Supreme Court of India had the occasion to deal with same issue as to whether the persons working as Development Officers in the Life Insurance Corporation (LIC) could be treated as "workmen" under the schematic context of ID Act. After referring and analyzing ratio of law laid down in number of earlier decisions viz. in Mukesh K.Tripathi Vs. Sr.Divisional Manager, LIC & others, (2004) 8 SCC 387; Life Insurance Corporation of India Versus R. Suresh, (2009) 11 SCC 319; S.K.Verma Vs. Mahesh Chandra & another, (1983) 4 SCC 214; Workmen Vs. Indian Standards Institution (1975) 2 SCC 847; H.R. Adhyanthya & others Vs. Sandoz (India) Ltd. and others (1995) 5 SCC 737; May & Baker (India) Ltd. Vs. Workmen, AIR 1967 SC 678; Western India Match Co.Ltd. Vs.Workmen, AIR 1964 SC 472; Burmah Shell Oil Storage & Distribution Co.of India Ltd. Vs. Burmah Shell Management Staff Association; M. Venugopal Vs. LIC of India, (1994) 2 SCC 323; Ambica Quarry Works Ltd. vs. State of Gujarat, AIR 1987 SC 1073 and AR Antulay Versus R.S. Nayak, (1988) 2 SCC 602 etc., their lordships were pleased to conclude and hold that the development officers working in the LIC are not "workmen" under Section 2(s) of the Act.

14- To my mind, the judgements relied upon by the side of the claimant/workman viz. **S.K. Maini Versus M/s Carona Sahu Company Ltd., (1994) 3 SCC 510; Sharad Kumar Vs. Govt. of NCT of Delhi (2002) 4 SCC 490; and T.Boby Francis Vs. Lucy Varghese & others, 2016 LLR 535** are of no help as the facts of those cases are distinct from the case in hand.

15- Having regard to the decision of Hon'ble Supreme Court and the facts & circumstances of the case, this Tribunal has no hesitation to hold that the claimant/workman who was working as a Probationary Development Officer with LIC was not a "workman" under Section 2(s) of the Act. As such, the claim petition filed by the claimant/workman is not maintainable under the Act. This issue is decided accordingly against the workman/claimant.

Issue No.2 and 3 :-

16- In view of my findings on issue No.1 above, this Tribunal has no jurisdiction to deal with the lis in question between the parties and as such, this Tribunal considers its expedient not to decide the dispute regarding termination/discharge of the workman from service, on merits.

ORDER

The claimant who worked as Probationary Development Officer under the Management is not a "workman" under Section 2(s) of the Act and as such, this Tribunal has no jurisdiction to decide the lis/dispute between the parties. However, the claimant is at liberty to seek remedy before the appropriate forum in accordance with law. Award is passed accordingly. Let copy of this Award be sent for publication as required under Section 17 of the Act.

Dictated & corrected by me.

PRANITA MOHANTY, Presiding Officer

25th September, 2019

नई दिल्ली, 5 नवम्बर, 2019

का.आ. 1942.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार मेसर्स एयरपोर्ट अथॉरिटी ऑफ इण्डिया के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय-2, नई दिल्ली के पंचाट (संदर्भ संख्या 17/1998) को प्रकाशित करती है जो केन्द्रीय सरकार को 30.10.2019 को प्राप्त हुआ था।

[सं. एल-11012/6/1997-आईआर (एम)]

डी. के. हिमांशु, अवर सचिव

New Delhi, the 5th November, 2019

S.O. 1942.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 17/1998) of the Central Government Industrial Tribunal/Labour Court-2, New Delhi now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of M/s. Airport Authority of India and their workman, which was received by the Central Government on 30.10.2019.

[No. L-11012/6/1997-IR (M)]

D. K. HIMANSHU, Under Secy.

ANNEXURE

CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL CUM LABOUR COURT No. 2: NEW DELHI

PRESENT : SMT. PRANITA MOHANTY, Presiding Officer, CGIT-cum-Labour Court-II, New Delhi

INDUSTRIAL DISPUTE CASE No.17/1998

Date of Passing Award : 27th September, 2019

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Shri Tej Pal s/o. Shri Ram Chander,
Qr.No. 1/3707, Gali No.1, Bhagwanpur Ghera,
Loni Road,
Delhi 110032. …Workman/Claimant

Versus

Airport Authority of India (National Airports Division)
Through its Executive Director (Personnel),
Rajiv Gandhi Bhawan,
New Delhi 110003. … Management/Respondent

Appearances :-

Shri Radhey Shyam, A/R For the Workman

Shri Vaibhav Kalra and
Ms. Neha Bhatnagar , A/Rs For the Management

AWARD

This Award shall decide a reference which was made to this Tribunal by the appropriate Government vide letter No.L-11012/6/97-IR(M) dated 31.12.1997 under clause (d) of sub-section (1) and sub-section (2A) of Section 10 of the Industrial Disputes Act, 1947(in short "the Act") for adjudication of an industrial dispute, terms of which are as under:

> 'Whether the action of the management of Airport Authority of India (National Airports Division) New Delhi in terminating the services of Shri Tej Pal, Paper Man, w.e.f. 14/12/1996, is justified ? If not, to what relief the concerned workman is entitled to and from what date?'

2. Both parties were put to notice and the claimant Tej Pal filed his statement of claim, with the averments that in the last week of January, 1989 he was engaged as a Paper Man by the National Airports Authority Printing Press & was initially paid an amount of Rs.450/- per month which was subsequently revised and his last wages for the month of September, 1996 was Rs.1700/- per month. Though the workman served the above Press owned and run by the Management for the subsequent period from 1/10/1996 to 13/12/1996 but he was not paid wages for the same despite numerous requests to the Manager of the Press and other superior authorities at his own and through Airports Authority Kamgar Union (NAAKU) of which he was a Member but to no avail. Thereafter the aforesaid Union approached the Conciliation Officer but to no success. It is pleaded that the Manager of the Press or the Management of Airport Authority of India did not give any appointment letter, identity card, medical facility etc. etc; to the workman. The Management sealed the Printing Press in the evening of 13th December, 1996 when the workman and his fellow colleagues left the press after performing duty and when they reported for work in the morning of 14/12/1996 at

9.30 AM, they came to know about the wrongful/illegal lock out of the Press and in this way the services of the workman/claimant who had worked for more than 240 days with the Management, were terminated without giving any notice or notice pay or retrenchment compensation and as such action of the Management is illegal and wrong. Prayer has been made for reinstatement with full back wages in the industrial pay-scale of Rs. 2,550-3,660 w.e.f. 14/12/1996 and continuity of services and all consequential benefits vis-à-vis grant of next higher pay scale of Rs. 2720--4400 on completion of 8 years service w.e.f last week of January, 1997 besides interest @ 18% per annum as compensation.

3. Management resisted the claim of the Claimant Union, by filing written reply and took preliminary objections that the claim is not maintainable as there is no employer and employee relationship between the parties because the claimant/applicant was never the employee of the Management and as such no industrial dispute existed between the parties Even no valid/prior demand notice was served upon the Management. The claim is not maintainable for non joinder of necessary party viz contractor. While denying all the allegations of the claimant, it has been pleaded that the Management had never engaged any such person including the claimant and completion of 240 days by him is a mere concoction for creating a claim and the Management never terminated the services of any workman. It is alleged that the printing press though owned by Airport Authority of India was run & managed by Shri N.Lall, a contractor appointed on contract basis, on a consolidated amount of Rs.10,000/- per month initially. It is also alleged that the press was closed perfectly in a legal manner as per terms and conditions of the contact between the contractor and the Management. Prayer has been made for rejection of claim petition.

4- The claimant/'workman filed rejoinder/replication, reiterating his own case and denied the allegations made in the written statement.

5- On the pleadings of the parties, following issues were framed on 11/4/2013 by my learned Predecessor:-

(1) Whether the contract between the management and Shri N. Lal to run the press was sham and bogus ?

(2) Whether the claimant was an employee of the Management ?

(3) As in terms of reference ?

6. In order to prove the case, the workman Shri Tej Pal himself appeared in the witness box as WW1 & tendered his evidence by way of affidavit Ex.WW1/A. He relied on the documents Mark-1 to Mark-20..

7- On the other hand, the Management examined Shri Girish Kumar, Dy.General Manager (HR), who filed his affidavit as Ex.MW1/A and placed reliance on the documents Mark-A and Mark-B (colly.)

8- I have heard A.Rs appearing on behalf of the parties. I have also gone through the record carefully. My findings on above issues are as follows.

Issue No.1 and 2 :-

9- Both these issues being inter-related are taken up together and they can be disposed of conveniently by common discussion.

10- At the outset I may mention that case of the claimant/workman is that he had been working as Paper Man in the Printing Press of the Management from last week of January, 1989 till 13/12/1996 and that his services were illegally terminated on 14/12/1996. On the contrary, contention of the Management is that the workman/claimant was never engaged by it and there existed no relationship of employer-employee between the parties. The Management had in fact awarded contract in favour of a contractor Mr.N. Lall for running and managing the press owned by the Management.

11- Affidavit Ex.WW1/A filed by the workman/claimant is in line with the averments made in the statement of claim. In cross examination he deposed that he was appointed as Paper Man on 1/1/1989 by one Nand Lal who was the then Management of the Printing Press, though no appointment letter was issued to him. He had worked continuously from 1/1/1989 to 13/12/1996. He showed his ignorance if Shri Nand Lal was a contractor appointed by Airport Authority of India to run the printing press or that **there was no post of Manager in Airport Authority of India**. He explained that during tenure of his employment Shri Nand Lal had been paying him salary after obtaining his signatures on blank payment voucher of AAI. The workman/claimant has filed on record number of documents such as copy of the booklet issued by the Management on the occasion of Fourth Anniversary of National Airports Authority, describing its achievements and performance as Mark-1; copy of the blank job card as Mark-2; payment voucher dated 11/5/1992 as Mark-3; copy of the complaint dated 21/9/94 which Shri H.S. Vats, General Secretary of National Airports Authority Kamgar Union had made to the Authority under Minimum Wages Act regarding non payment of wages as per Minimum Wages Act to the employees working as Packer, Helper, Machine Man as Mark-4; copy of demand notice dated 11/1/1995 which the aforesaid Union had given to the Chairman, National Airports Authority, for payment of difference of wages as per Minimum Wages ar Mark-5; copy of the letter dated 6/2/1995 whereby the Administrative Officer of National Airports Authority had forwarded the aforesaid demand notice of the Union to the **Manager Press, National Airports Authority, Safdarjang Airport, New Delhi and had sought his comments, as Mark-6;** copy of letter dated 15/2/1995 whereby Asstt.Labour Commissioner had forwarded the complaint of NIA Kamgar Union to the

Director (Admn.), National Airport Authority regarding non payment of wages to the different categories of workers as Mark-7 ; copy of the reminder letter dated 13/3/1995 sent by Administrative Officer of National Airports Authority to the Manager Press, National Airports Authority, Safdarjang Airport, New Delhi a**s Mark-8;** copy of letter dated 30/3/1995 of the Executive Director of National Airports Authority, New Delhi regarding recognition of NAA Kamgar Union as Mark-9. It is evident from the aforesaid documents especially documents Mark-6 and Mark-8 that there existed post of Manager Press under the Management.

12- MW1 Shri Girish Kumar in his testimony/affidavit Ex.MW1/A tried to support the version of the Management that contract/agreement Mark-A was awarded to Shri N.Lal and that the workers including the claimant were engaged by the contractor. He also stated that the printing press was closed by the Management and the assets of the printing press had been sold out. There is a set procedure for appointment of employee on the roll of the Management viz advertisement of vacancies in the newspaper; receipt of applications; conducting of test/interview of eligible candidates by a Selection Committee and then preparation of merit list of suitable candidates. He also filed on record copy of the reply/report submitted by the Management to the Regional Labour Commissioner, stating that labour engaged by the Press Manager are not the workers/casual labour of Airport Authority of India. In cross examination this witness denied the suggestion that the agreement filed by the Management is a fake document. He showed his ignorance if N.Lall –the contractor had got requisite licence under CLRA Act or had ever issued any advertisement for engagement of persons like the present workman.

13- It is a matter of record that the Management has neither examined Mr. Lall –the contractor nor produced any other document to show that the claimant/Tej Pal was working in the Printing Press through the contractor Mr.Lall. Even perusal of the contract/agreement Mark-A shows that the award/contract was primarily for running of the printing press **with required manpower to be provided by the contractor at Headquarter of National Airports Authority**. The contract/agreement was valid for three years, commencing from 2nd January, 1989, that is say it was valid only upto 31st December, 1991. **There is nothing on record to suggest that the contract/agreement Mark-A which expired on 31/12/1991 was renewed/extended in favour of the said contractor or any fresh contract/agreement was executed in favour of some other contractor for running the Printing Press of the Management, which was run upto 31st December, 1996.** It is manifest from the reading of contract Mark-A that machinery, space/accommodation, electricity and paper used for printing were supplied by the Management and role of the contractor or the Manager Shri N.Lal was just to supply or supervise the manpower employed for printing of the printing material of the Management at the AAI Printing Press. It emerges that workers including the claimant were hired by Airport Authority of India **through the contractor/Manager M/s N.Lall** for doing the printing work. There is nothing on record to suggest that the Management had awarded contract to M/s N.Lal for completion of any project/scheme or that the said contractor himself was fully responsible for carrying out the project of the Management.

14- It is fairly settled that the ID Act as well as Contract Labour (Regulation & Abolition) Act, 1970 are essentially social and beneficial legislations. The main purpose of the CLRA Act, 1970 is to regulate the conditions of workers under the contract labour system and to provide for its abolition by the appropriate government as provided under Section 10 of the said Act. Section 12 of the said Act bars a contractor from undertaking or executing any work through contract labour, except under and in accordance with a licence issued. Section 23, 24 and 25 of the Act said makes contravention of the provisions of Act punishable thereunder. There is also requirement for the principal employer of the establishment to get itself registered under the CLRA Act so as to avail the benefit of provisions of the Act.

15- Constitution Bench of Hon'ble Supreme Court in the celebrated case of **Steel Authority of India Ltd. Vs. National Union Waterfront Workers, (2001) 7 SCC 1** noticed the following circumstances under which contract labour would be held to be the workmen of the principal employer :-

"107. An analysis of the cases, discussed above, shows that they fall in three classes :

(i) Where contract labour is engaged in or in connection with the work of an establishment establishment and employment of contract labour is prohibited either because the Industrial Adjudicator/Court ordered abolition of contract or because the appropriate Govt. issued notification under Section 10(1) of the CLRA Act, no automatic absorption of the contract labour working in the establishment was ordered.

(ii) Where the contract was found to be a sham and nominal, rather a camouflage, in which case the contract labour working in the establishment of the principal employer, were held in fact and in reality, the employees of the principal employer himself. Indeed such cases do not relate to abolition of contract labour but present instances wherein the Court pierced the veil and declared the correct position as a fact at the stage after employment of contract labour stood prohibited.

(iii) Where in discharge of a statutory obligation of maintaining a canteen in an establishment, the principal employer availed the services of a contractor, the Courts have held that the contract labour would indeed be the employees of the principal employer.

16- In the case of **Management of Ashok Hotel Vs. the Workmen (W.P. –Civil No.14828/2006 – decided on 19/2/2013)**, similar issue was involved and it was a case where various workmen were working continuously as safaiwala/housemen in the kitchen department etc. and they were alleged to be working directly under the contractor who had entered into a contract with the principal employer i.e. Ashok Hotel. Contention of the Management to the effect that workmen were employees of the contractor was rejected and contract in the said case was held to be sham and camouflage so as to deny direct relationship of employer (Ashok Hotel) and the workmen.

17- I may mention that situation in the instant case is not distinct. It is evident from the evidence adduced on record that the contract Mark-A awarded to the contractor was simply for supply of workforce/manpower to the Management Airport Authority of India, for doing the printing work at the Printing Press of the Management. Even control and supervision over the work of the claimant/workman was that of the Management. Thus, it emerges from the record that the workman/claimant had not been hired in connection with the work of a contractor rather he had been hired by the contractor for the work of the Management, that is to say for doing the printing work at the Printing Press of the Management/Airport Authority of India. It is reiterated that the contract/agreement Mark-A **expired on 31/12/1991** but there is nothing on record to show that the said contract was renewed/extended in favour of the said contractor or any fresh contract/agreement was executed in favour of some other contractor for running the Printing Press of the Management, which was run upto 31st December, 1996. This is indicative of the fact that contract/s between the Management and N.Lall **was a sham and mere camouflage** so as to deny relationship of employer and employee between it and the claimant herein. It is manifest from the evidence adduced on record that the workman Tej Pal had been working regularly without any breaks from January, 1989 till 13/12/2014 whereas his services were terminated w.e.f.14/12/1996. As such, this Tribunal has no hesitation to hold that there existed relationship of employer –employee between the Management/Airport Authority of India and the workman/ claimant herein. Both these issues are decided accordingly in favour of the claimant and against the Management.

Issue No. 3 :-

18- It is the case of the claimant that his services were terminated without issuing any notice or without any notice pay/compensation. It is a matter of record that the Management has not filed on record any document to show that any notice or retrenchment compensation has been paid to the claimant prior to his termination. Thus it can be inferred that no notice or compensation in lieu of notice period was given to the claimant by the Management and termination of the claimant/workman by the Management was in violation of provisions of Section 25-F of the Act. This goes to show that the Management terminated the services of the claimant/workman in violation of the provisions of Section 25-F of the Act.

19- I may mention that provisions of Section 25-F of the Act which provides for conditions precedent to retrenchment of workmen, are absolute and inexorable and it reads as under :-

> "25-F : **Conditions precedent to retrenchment of workmen** –
>
> No workman employed in any industry **who has been in continuous service for not less than one year under an employer** shall be retrenched by that employer until –
>
> (a) The workman has been given one month's notice in writing indicating the reasons for retrenchment and the period of notice has expired, or the workman has been paid in lieu of such notice, wages for the period of the notice;
>
> (b) The workman has been paid, at the time of retrenchment, compensation which shall be equivalent to fifteen days' average pay for every completed years of continuous service or any part thereof in excess of six months; and
>
> (c) Notice in the prescribed manner is served on the appropriate Government or such authority as may be specified by the appropriate Government by notification in the Official Gazette."

The above provision makes it clear that the employer is required to give notice to the appropriate Government apart-from giving one month's notice in writing or one month's wages in lieu of the notice and payment of retrenchment compensation to the concerned workman. There is nothing on record to show that either any notice was issued by the Management or notice pay/compensation was paid to the workman/claimant prior to his termination. As such, the Management has violated the provisions of Section 25-F of the Act.

20- There is long line of decisions of Hon'ble Apex Court as well as of various High Courts that provisions of Section 25-F of the Act are mandatory in nature and termination of the workman from services in derogation of the provisions of Section 25-F of the Act will render action of the Management to be illegal and void under the law.

21- Since there is no evidence on record that any valid notice was issued by the Management to the workman at the time of termination of his services or in lieu of such notice, any compensation was paid to him, as such action of the Management in terminating the services of the workman w.e.f. 14/12/1996 is held to be illegal and void.

22- Now the crucial question arises for consideration is whether the claimant/workman is entitled to any incidental relief of payment of back wages and/or reinstatement of service with full back wages. It stands proved on record that claimant was continuously in the employment of the Management from January, 1989 to 13/12/1996. **His last drawn wages were Rs.1700/- per month**. Services of the claimant were illegally terminated on 14/12/1996. It would not be out of place to mention here that printing press owned by the Management was admittedly closed down w.e.f. 31/12/1996 and its asset/s were sold out. For closing down any undertaking of an industrial establishment, a set procedure has been prescribed u/Section 25-O of the Act, which provides that an employer who intends to close down an undertaking of an industrial establishment shall apply to the appropriate Government for prior permission at least 90 days before the date on which the intended closure is to become effective. The Management has not led any evidence to show that it had sought permission of the appropriate Government prior to closing down the press as required under Section 25-O of the Act. It is pertinent to mention here that sub-section (6) of this Section 25-O clearly stipulates that where no application for permission under sub-section (1) is made within the period specified therein or where the permission for closure has been refused, **the closure of the undertaking shall be deemed to be illegal from the date of closure and the workmen shall be entitled to all the benefits under any law for the time being in force as if the undertaking had not been closed down.** Be that as it may, in order to seek reinstatement & back wages, onus was upon the claimant/workman to plead and prove that he is unemployed since after his termination. The claimant has neither pleaded nor proved that he was/is unemployed since after termination of his services. There is nothing on record to suggest that the workmen Tej Pal was selected through due process of selection or he was a regular / permanent employee of the Management.

23- The Hon'ble Apex Court in case ***"Deepali Gundu Surwase v. Kranti Junior Adhyapak Mahavidyalaya"*** reported as (2013) 10 SCC 324 has held as under :

"The propositions which can be culled out from the aforementioned judgments are :

i) In cases of wrongful termination of service, reinstatement with continuity of service and back wages is the normal rule.

ii) **Ordinarily, an employee or workman whose services are terminated and who is desirous of getting back wages is required to either plead or at least make a statement before the adjudicating authority or the Court of first instance that he/she was not gainfully employed or was employed on lesser wages**. If the employer wants to avoid payment of full back wages, then it has to plead and also lead cogent evidence to prove that the employee/workman wads gainfully employed and was getting wages equal to the wages he/she wads drawing prior to the termination of service. This is so because it is settled law that the burden of proof of the existence of a particular fact lies on the person who makes a positive averments about its existence. It is always easier to prove a positive fact than to prove a negative fact. Therefore, once the employee shows that he was employed, the onus lies on the employer to specifically plead and prove that the employee was gainfully employed and was getting the same or substantially similar emoluments."

24- Latest trend itself discernable from the various pronouncements made by the Hon'ble Apex Court is that when a person has been engaged on daily wage basis or for doing temporary kinds of work, in that situation full back wages are not to be awarded. There are number of factors which are required to be considered by the Tribunal while considering the question of reinstatement with back wages. It has been held in the case of **Hari Nandan Prasad Vs. Food Corporation of India (2014) 7 Supreme Court cases 190** as under :-

> "Relief by way of reinstatement with back wages is not automatic and may be wholly inappropriate in a given fact situation even though the termination of an employee is in contravention of the prescribed procedure. Compensation instead of reinstatement has been held to meet the ends of justice. An order of retrenchment passed in violation of Section 25-F although may be set aside but an award of reinstatement should not, however, automatically be passed. The award of reinstatement with full back wages in a case where the workman has completed 240 days of work in a year preceding the date of termination, particularly daily wages has not been found to be proper by the Supreme Court and instead compensation has been awarded. The Supreme Court has distinguished between a daily wager who does not hold a post and a permanent employee. The reasons for denying the relief of reinstatement in such cases are obvious. It is trite law that when the termination is found to be illegal, because of non payment of retrenchment compensation and notice pay as mandatorily required under Section 25-F of the Industrial Disputes Act, even after reinstatement, it is always open to the management to terminate the services of that employee by paying him the retrenchment compensation.

25- Having regard to the recent judicial trends coupled with the facts & circumstances of the case as discussed hereinabove, this Tribunal is of the opinion that an amount of Rs.One lakh (Rupees One Lakh) as compensation would

be just and reasonable, and the same is awarded in favour of the workman/claimant herein. In case this compensation amount is not paid by the Management within two months from the date of publication of this Award, then the claimant will be entitled to recover the same alongwith interest @ 6% per annum from the date of filing the claim petition till realization of the amount. This issue is decided accordingly.

ORDER

The reference is answered on the contest in favour of the workman. Lumpsum compensation amount of Rs.1,00,000/- (Rupees One Lakh) is hereby awarded in favour of the claimant/workman which shall be paid by the Management within two months from the date of publication of the Award, failing which the claimant will be entitled to recover the same alongwith interest @ 6% p.a. from the date of publication of Award till realization. Award is passed accordingly. Let copy of this Award be sent for publication as required under Section 17 of the Act.

Dictated & corrected by me.

PRANITA MOHANTY, Presiding Officer

27th September, 2019

नई दिल्ली, 5 नवम्बर, 2019

का.आ. 1943.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार मेसर्स नेशनल इंश्योरेंस कम्पनी लिमिटेड के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, बेंगलूर के पंचाट (संदर्भ संख्या 09/2006) को प्रकाशित करती है जो केन्द्रीय सरकार को 30.10.2019 को प्राप्त हुआ था।

[सं. एल-17012/9/2005-आईआर (एम)]

डी. के. हिमांशु, अवर सचिव

New Delhi, the 5th November, 2019

S.O. 1943.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 09/2006) of the Central Government Industrial Tribunal/Labour Court, Bangalore now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of M/s. National Insurance Company Limited and their workman, which was received by the Central Government on 30.10.2019.

[No. L-17012/9/2005-IR (M)]

D. K. HIMANSHU, Under Secy.

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, BANGALORE

DATED : 21ST OCTOBER 2019

PRESENT : JUSTICE SMT. RATNAKALA, Presiding Officer

CR 09/2006

I Party

Sh. B M Malagoudanavar
S/o Malagonda Malagoudanavar,
H Sadashiva Photo Studio,
K C Road, Chikkod (PO),
BELAGUM DIST – 591 201.

II Party

The Regional Manager,
National Insurance Company,
Limited, No. 144.
Subhram Complex,
2nd Floor, M G Road,
BANGALORE – 560 001.

Appearance

Advocate for I Party : Mr. S Ramesh

Advocate for II Party : Mr. K Sridhara

AWARD

The Central Government vide Order No. L-17012/9/2005-IR(M) dated 28.02.2006 in exercise of the powers conferred by Clause (d) of Sub-Section (1) and Sub-Section2(A) of Section 10 of Industrial Dispute Act, 1947 (for brevity 'the Act' hereafter) referred the following Industrial Dispute for adjudication.

"Whether the management of National Insurance Company Ltd., is justified in dismissing the service of Sri Bhupal Malagouda Malagoudanavar from the Corporation. If not, to what relief the workman is entitled to?"

1. The fact is,

the 1st Party was appointed as a Junior Inspector w.e.f 01.05.1997 at Belgaum Branch; his service was confirmed on 01.05.1982 as a Development Officer and was posted at Nippani Branch. On certain allegation he was issued articles of charges dated 08.07.1998, enquiry was initiated the Enquiry Officer submitted his report dated 21.04.2002 holding him guilty of the misconduct. Acting on the Enquiry Report, Regional Manager vide order dated 26.04.2002 passed punishment order of removing him from service and recovery of Rs. 806/-. The Appellate Authority confirmed the order of the Disciplinary Authority, his subsequent petition to the Chairman cum Managing Director did not yield result.

2. In his statement filed before this Tribunal, the 1st Party challenged the fairness of the Domestic Enquiry held by the 2nd Party against him. He claimed that he gave very good business to the 2nd Party and was given incentives; the allegations made against him are all false, the punishment imposed is unwarranted and shockingly disproportionate. He had served the 2nd Party for about 24 years; in view of the order of termination he has lost his livelihood……

3. In their counter to the claim the 2nd Party contented that the dispute is highly belated. During the enquiry he admitted all the charges orally and in writing, he pleaded guilty to the charges. His allegations against the procedure of enquiry, Enquiry Report and the consequential punishment order are all denied.

4. On the rival pleading of the parties Preliminary Issue was framed in respect of the validity of the Domestic Enquiry. After a full pledged trial, the issue was answered in the negative against the 2nd Party holding *the Domestic Enquiry conducted against the 1st Party by the 2nd Party is not fair and proper* vide order dated 18.10.2010. On an interim application filed by the 1st Party, after recording the evidence of the 1st Party my learned predecessor allowed the application partly and ordered interim maintenance vide order dated 08.04.2011 at the rate of Rs. 6,937/- from the date of the application until disposal of the reference or on the superannuation whichever occurs first. On the failure of the Management to comply the order of interim maintenance on the motion of the 1st Party vide order dated 11.06.2014 the defence of the 2nd Party was struck off, by holding "*..the management of the National Insurance Company ltd. failed to justify the action of dismissing the services of Sh. Bhupal Malagoud Malagoudanavar from its service that he is liable to reinstate him in service with continuity of service, full back wages and all other consequential benefits.*" The order was treated as an Award and was published in the Gazette Notification.

5. The 2nd Party challenged the order before the Hon'ble High Court in W.P. No. 7928/2015(L-TER) dated 16.02.2016. During the pendency of the proceedings, the 2nd Party paid the interim relief to the 1st Party and thus complied the order of this Tribunal dated 08.04.2011. The Hon'ble High Court set aside the impugned order / award of this Tribunal dated 11.07.2014. The Defence was restored, the matter is remanded keeping open all the contentions.

6. After remand the 2nd Party raised the question of maintainability of the reference and adduced evidence by examining two witnesses and produced 9 documents as Ex M-3 to Ex M-11. During the cross examination of 1st Party 5 more documents were marked as Ex M-12 to Ex M-16. The 1st Party led his rebuttal evidence. Both have submitted their argument in writing.

7. As the things stand now, the 2nd Party is disputing the very identity of the 1st Party as a workman u/sec 2(s) of 'the Act' since he was a Development Officer working in Grade-I. If said contention is accepted, then this Tribunal has no jurisdiction to entertain the dispute, otherwise the 2nd Party shall be accommodated to prove the charges afresh.

8. The evidentiary material produced by the 2nd Party through the evidence of their Regional Manager is to the effect that,

1st Party was a Development Officer; the principle nature of his work is development of the business of the Company; he can commit the Company for crores of rupees by issuing cover notes which is substitute for insurance policies and he can take decisions on behalf of the Company; he has no fixed time of duty; he need not sit in the office even during office

hours; he can receive money / premium on behalf of the company even after duty hours and has power to take decision even after duty hours. He is entitled for growth incentive, profit incentive and cost control incentive; if he fails to achieve business targets he will be demoted; he enjoys benefits like telephone allowance, entertainment allowance, 100% car loan and petrol allowance; he can appoint agents, and train them and exercise all administrative powers on them in procuring business of the Company; his pay scale is above the limit fixed by the Industrial Dispute Act. The Development Officer comes under the category of Managerial Cadre; his manual work is incidental in relation to his managerial duty in development of business of the company but not in the nature of clerical or subordinate work. His main work is not manual or clerical in nature but managerial.

9. Through MW-2 / the Manager of the 2nd Party the documents i.e. the appointment order of the 1st Party as the Junior Inspector (Ex M-4), his promotion order as Inspector Grade-I (Ex M-5), the cover note signed by him on behalf of 2nd Party (Ex M-6), and the extract of scheme pertaining to Rationalisation of pay scales and other conditions of service of Development Staff, scheme 1996 formulated by the Ministry of Finance pertaining to the Development Staff and Supervisory, Clerical and Sub-ordinate staff are marked as Ex M-11.

The 2nd Party also places its reliance on the judgment of the Apex Court reported in Chauharya Tripati and others vs LIC of India in LAWS(SC) 2015 3 126 which held that *the Development Officer of the LIC of India are not workmen within the meaning of 2(s) of the Industrial Dispute Act*.

10. The 1st Party in his rebuttal evidence contends that the above judgment applies to the employees of LIC only and not to the present case, since the duties and responsibilities of the Development Officers of both Insurance Companies differ. His work was only to fill the column as per the tariff book and customer will deposit the cash in the cash branch; the policy will be issued after completion of the formalities; he has no power in the process of any administration in the office; nature of his work is clerical. He was not having Disciplinary Power, Managerial or Supervisory Power; he has not appointed any agents and no agent worked under him; without cover note also the office has power to issue the policy, even the Dealer of the Vehicle can also issue the cover note, receipt and policy also; he was never appointed to the post of Development Officer hence, there is no question of calling him as Development Officer.

He has laid his hands on the judgments reported in S.C II LLJ P. 401 Arkal Govind Raj Rao vs Ciba Gelgy of India Ltd.; Laws (GJH) 2002-7-135 Shankarbhai Nathalal Prajaptai vs Maize Products and in Laws (SC) 1984-3-26 Ved Prakash Gupta vs Delton Cable India Pvt. Ltd.

In back drop of the above this Tribunal at the first place is obliged to resolve the controversy whether the judgment in chauharya supra applies to the Development Officers of other Insurance Companies too?

11. Sec 2(kk) of the Act defines Insurance Company as follows:

"Insurance Company" means an Insurance Company as defined in sec 2 of Insurance Act 1938 (4 of 1938) having branches or other establishments in more than one state.

The Insurance Act 1938 is passed by the Government of India to consolidate and amend the law relating to the business of insurance.

Sub sec 7A of sec 2 of Insurance Company Act reads thus:

[(7A) "Indian insurance company" means any insurer, being a company which is limited by shares, and, — (a) which is formed and registered under the Companies Act, 2013 (18 of 2013) as a public company or is converted into such a company within one year of the commencement of the Insurance Laws (Amendment) Act, 2015 (5 of 2015); (b) in which the aggregate holdings of equity shares by foreign investors, including portfolio investors, do not exceed forty-nine per cent. of the paid up equity capital of such Indian insurance company, which is Indian owned and controlled, in such manner as may be prescribed Explanation. — For the purposes of this sub-clause, the expression "control" shall include the right to appoint a majority of the directors or to control the management or policy decisions including by virtue of their shareholding or management rights or shareholders agreements or voting agreements; (c) whose sole purpose is to carry on life insurance business or general insurance business or re-insurance business or health insurance business;

Sub sec 9 further defines insurer thus:

"insurer" means— (a) an Indian Insurance Company, or (b) a statutory body established by an Act of Parliament to carry on insurance business, or (c) an insurance co-operative society, or (d) a foreign company engaged in re-insurance business through a branch established in India.

12. The 2nd Party National Insurance Company is a Company registered under the Indian Companies Act established under the Indian Insurance Act of 1938 and wholly owned by Government of India engaging in all types of general insurance business for the service and welfare of the general public, it is the custodian of public funds working under the guidelines from Government of India and appoints a Development Officers to procure business from the public. Life Insurance Corporation of India is also wholly owned by Government of India but engaged in business of

Life Insurance. Both fall within the designation of Indian Insurance Company as contemplated by Section 2(7A) of Indian Insurance Company.

13. With an object to provide for the acquisition and transfer of shares of Indian insurance companies and undertakings of other existing insurers in order to serve better the need of the economy by securing the development of general insurance business in the best interests of the community and to ensure that the operation of the economic system does not result in the concentration of wealth to the common detriment, for the regulation and control of such business and for matters connected therewith or incidental thereto, the parliament has enacted THE GENERAL INSURANCE BUSINESS (NATIONALISATION) ACT, 1972. Section 16 of the said Act (CHAPTER V) SCHEME FOR REORGANISATION OF GENERAL INSURANCE BUSINESS

Contemplates that,

(16). If the Central Government is of opinion that for the more efficient carrying on of general insurance business it is necessary so to do it may, by notification, frame one or more schemes provided therein. One among them is the rationalisation or revision of pay scales and other terms and conditions of service of officers and other employees wherever necessary.

14. In exercise of the powers conferred by clause G of sub section 1 of the statute (supra) the Central Government has framed a scheme to provide for rationalisation and revision of pay scales of employees working in supervisory, clerical and subordinate position in insurance, which is titled General Insurance (Rationalisation and Revision of pays scales and other conditions of Service) scheme 1974 (the said scheme is marked in evidence as Ex M-11). The scheme applies to all persons of the Development staff.

Clause 3 (9) defines –

"Development Staff" means the persons employed for the purpose of procuring general insurance business and categorised or redesigned under this scheme –

(a) As development superintendents or Inspectors Grade I or Inspectors Grade II

or

(b) As field workers.

Thus, the scheme pervades Development Staff of the 2nd Party which is in the business of General Insurance.

15. MW-1 in his affidavit evidence highlighted the perquisites which the development Officer enjoys like Telephone allowance, entertainment allowance, 100% car loan and petrol allowance, which benefit is enjoyed by Top Managerial Officers. He also stated that their pay scale is above the limit fixed by the ID Act. At Para 5 of his affidavit evidence, he has distinguished the 1st Party from the category of a workman which fact is, uncontroverted during his cross examination. His cross examination revolved around the fact that, the 1st Party has no power of administration, development, finance, appointment and disciplinary action. It was also disputed by the 1st Party that, he had no power to reject / accept the cover note.

The Apex Court in the Judgement reported in AIR 1967 Supreme Court 678 (V 54 C 145) M/s May Baker (India) Ltd V/s their workmen's – Held that, canvassing sales representatives are not workmen under sec 2(s) of 'the Act'.

In another Judgement i.e., S. K. Varma Vs Mahesh Chandra (1983) 4 SCC 214 was of the view that the Development Officers of Life insurance Corporation of India were workmen. But said Judgement was held per incuriam by the Constitution Bench of the Apex Court reported in 1994 (5) Supreme Court Cases 737 (H. R. Adyanthaya and others Vs Sandoz (India) Ltd and Others). Subsequently, the larger Bench of the Apex Court in its Judgement reported in (2004) 8 SCC in the matter of Mukesh K T vs Senior Divisional Manager LIC, followed the ratio of May Baker (Supra) and since, the Judgement of SK Varma (Supra) was held not good Law by the constitution Bench in the Judgment of H R Adyanthaya (Supra). On an analysis of its earlier Judgements the Apex Court in the matter of Chauharya Tripathi (Supra), on a survey of precedents for and against held that the earlier Judgement of R Suresh Appeal (civil) 2004 of 2008 LIC of India vs R. Suresh, which had upheld the jurisdiction of the Industrial Tribunal to entertain the dispute pertaining to its Development Officer of L.I.C as per incuriam (placing reliance on the Judgements rendered in A R Anthule vs R S Naik 1988 2 SCC 602 Punjab Land Development and Reclamation Corporation Ltd., vs Labour Court (1990) 3 SCC 682 State of UP vs Synthetics and Chemicals Ltd., (1991) 4 SCC 139 and Shiddharam Satlaingappa Mhetra vs State of Maharashtra (2011) 1 SCC 694) and has asserted,

"*we conclude and hold that the Development Officers working in LIC are not workmen Under Section 2(S) of the Act….*"

16. The above ruling till date holds the field. But neither of the parties have not distinguished between service condition of Development Officers of Life Insurance Corporation of India with other registered Corporation engaged in the business of General Insurance / Health Insurance etc. The Development Officers of the 2nd Party which is into the

business of general insurance are a category by themselves, their pay scale and other service condition are stream lined by the Central Government vide notification at Ex M-11. Of course they are supervisors or administrators, at the same time they are not 'workman' also by virtue of the nature of the work they perform. Their work is neither Clerical, manual, skilled, technical or operational. If the 1st Party during his tenure did not get an occasion to issue cover note or appoint any that does not pull him out of the scheme notified by the Central Government (supra) and ousts him from category of workman as defined by sec 2(s) of 'the Act'.

17. An effort is made by the 1st Party during the course of cross examination of MW3 and also in his rebuttal affidavit evidence that, he is not a development Officer and no such promotion order is communicated to him; there is no service condition / contract of employment between him and the 2nd Party in reference to the post of Development Officer etc., he was appointed as a Junior Inspector and still continues in the same post performing the same duties but the above contention is without foundation.

But above contention is against the documentary evidence which he himself have admitted vide order dated 12.04.1979, while confirming his service as Junior Inspector, he was informed that he will be governed by the provisions of the General Insurance (Rationalisation of pay scales and other conditions of service of development staff) scheme 1976 conduct, discipline and appeal rules 1975 and general insurance (termination, superannuation and retirement of Officers and development staff) Scheme 1976 and other rule of Scheme….. that may come into force…. He has acknowledged the receipt of the said original order along with the copy of the development scheme. A cover note issued by him to a policy holder is produced as a sample which bears his signature and seal. He has transacted with his Higher Officials with the designation Development Officer (Ex M-10, Ex M-14 to Ex M-16), now it does not lay in his mouth to dispute his Official Designation as Development Officer. On two counts he does not qualify to enjoy the immunity available for a workman. Firstly on the principle laid down by the Apex Court in M/s May Baker (Supra), secondly on the notification published by Central Government (supra). The precedents selected by him do not meet the controversy to be adjudicated in this reference.

Even otherwise, in his affidavit evidence he had admitted his signature at Ex M-9 which is a voucher towards recovery of misappropriation amount of Rs. 4,254/-. The 2nd Party has produced Ex M-8, a letter dated 16.04.2002, whereby, he volunteered to remit Rs. 4,254/- against the articles of Charge No.2, alleging misappropriation of money by him. He had also sought the Management to condone his mistake and minimize the penalty further; he assured that he will not make such mistakes in future. However, he disputed his signature in the said letter which is marked as Ex M-8a. The veracity of the evidence of the witness cannot be accepted on its face value because he has gone to the extent of disputing his own signature Ex M-13(a) in the Vakalath form authorising his Advocate / Ex M-13, that leads to inference, he admitted one of the charge levelled against him in the Charge Sheet and allowed recovery of the misappropriated amount that is sufficient to hold that he is guilty of temporary misappropriation. If any allegation / charge are admitted by an employee, there is no need for the Management to probe by conducting a Domestic Enquiry as per procedure. However, in view of the discussion made in the earlier paras, I hold that this Tribunal has no jurisdiction to adjudicate the dispute referred in respect of the Development Officer of the 2nd Party. Hence, the following

AWARD

The reference is rejected.

(Dictated to o/s LDC, transcribed by her, corrected and signed by me on 21st October 2019)

JUSTICE SMT. RATNAKALA, Presiding Officer

नई दिल्ली, 5 नवम्बर, 2019

का.आ. 1944.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार मैसर्स बी.सी.सी.एल. के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय संख्या–1, धनबाद के पंचाट (संदर्भ संख्याः 06/2005) को प्रकाशित करती है, जो केन्द्रीय सरकार को 28.10.2019 को प्राप्त हुआ था।

[सं. एल–20012/127/2004–आईआर (सी–1)]

एस. सी. राय, अनुभाग अधिकारी

New Delhi, the 5th November, 2019

S.O. 1944.—In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the award of the Central Government Industrial Tribunal-cum-Labour Court No.1, Dhanbad (Ref. No. 06/2005) as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of M/s. BCCL and their workmen, which was received by the Central Government on 28.10.2019.

[No. L-20012/127/2004-IR(C-I)]

S. C. RAY, Section Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL NO. 1, DHANBAD

In the matter of reference U/S 10 (1) (d) (2A) of I.D.Act. 1947.

Reference: No. 06/2005

Employer in relation to the management of E. J. Area of M/S. B.C.C.L.

AND

Their workman

Present: Shri Dinesh Kumar Singh, Presiding Officer

Appearances:

For the Employers : None

For the workman. : None

State : Jharkhand. Industry:- Coal

Dated 30.09.2019

AWARD

By Order No.L-20012/127/2004 -IR (C-I) dated 15/12/2004 the Central Government in the Ministry of Labour has, in exercise of the powers conferred by clause (d) of sub-section (1) and sub –section (2A) of Section 10 of the Industrial Disputes Act, 1947, referred the following disputes for adjudication to this Tribunal:

SCHEDULE

"Whether the demand of the Rastriya Colliery Mazdoor Congress from the management of BCCL, EJ Area to deploy Sh. Bridha Gope back to the post of sand/coal Munshi in clerical Grade-III and regularize him in the said post w.e.f. 30.01.2000 is just, fair and legal? if so, to what relief is the workman entitled?"

2. After receipt of the reference, both parties were noticed and both parties appeared for certain dates, but subsequently both of them left appearing before this Tribunal. Thereafter regd. notices were issued to the workmen but even then no one appeared on behalf of the workmen. Case is pending since 03/01/2005 and workman is not appearing before Tribunal. so, it is felt that workman has lost his interest to resolve the matter. Hence No Dispute Award is passed. Communicate.

D. K. SINGH, Presiding Officer

नई दिल्ली, 5 नवम्बर, 2019

का.आ. 1945.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार मैसर्स बी.सी.सी.एल. के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय संख्या–1, धनबाद के पंचाट (संदर्भ संख्या 18/2000) को प्रकाशित करती है, जो केन्द्रीय सरकार को 28.10.2019 को प्राप्त हुआ था।

[सं. एल–20012/254/1999–आईआर (सी–1)]

एस. सी. राय, अनुभाग अधिकारी

New Delhi, the 5th November, 2019

S.O. 1945.—In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the award of the Central Government Industrial Tribunal-cum-Labour Court No.1, Dhanbad (Ref. No. 18/2000) as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of M/s. BCCL and their workmen, which was received by the Central Government on 28.10.2019.

[No. L-20012/254/1999-IR(C-I)]

S. C. RAY, Section Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL NO. 1, DHANBAD

In the matter of reference U/S 10 (1) (d) (2A) of I.D.Act. 1947

Reference: No. 18/2000

Employer in relation to the management of Loyabad Coke Plant of M/S. B.C.C.L.

AND

Their workmen

Present: Shri Dinesh Kumar Singh, Presiding Officer.

Appearances:

For the Employers : Sri D.K. Verma, Adv.

For the workman. : None

State : Jharkhand. Industry:- Coal

Dated 30.09.2019

AWARD

By Order No.L-20012/254/1999 -IR (C-I) dated 20/12/1999 the Central Government in the Ministry of Labour has, in exercise of the powers conferred by clause (d) of sub-section (1) and sub–section (2A) of Section 10 of the Industrial Disputes Act, 1947, referred the following disputes for adjudication to this Tribunal:

SCHEDULE

"Whether the demand of the Union/Workman for regularization of S/Sri Sidheswar Das and Prem Dusadh as C.H.P. Control Operator by the management of Loyabad Coke Plant under Sijua Area of M/s. B.C.C.L. is proper and justified? If so; to what relief the concerned men are entitled and from what date?"

2. After receipt of the reference, both parties were noticed and both parties appeared for certain dates, but subsequently the workmen left appearing before the Tribunal. Thereafter regd. notices were issued but even then no one appeared on behalf of the workmen. Case is pending since long and workmen is not appearing before Tribunal. so, it is felt that workmen have lost their interest to resolve the matter. Hence No Dispute Award is passed. Communicate.

D. K. SINGH, Presiding Officer

नई दिल्ली, 5 नवम्बर, 2019

का.आ. 1946.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार मैसर्स बी.सी.सी.एल. के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय संख्या–1, धनबाद के पंचाट (संदर्भ संख्या 19/2000) को प्रकाशित करती है, जो केन्द्रीय सरकार को 28.10.2019 को प्राप्त हुआ था।

[सं. एल–20012/256/1999–आईआर (सी–1)]

एस. सी. राय, अनुभाग अधिकारी

New Delhi, the 5th November, 2019

S.O. 1946.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award of the Central Government Industrial Tribunal-cum-Labour Court No.1, Dhanbad (Ref. No. 19/2000) as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of M/s. BCCL and their workmen, which was received by the Central Government on 28.10.2019.

[No. L-20012/256/1999-IR(C-I)]

S. C. RAY, Section Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL NO. 1, DHANBAD

In the matter of reference U/S 10 (1) (d) (2A) of I.D.Act. 1947

Reference: No. 19/2000

Employer in relation to the management of Loyabad Coke Plant of M/S. B.C.C.L.

AND

Their workman

Present: Shri Dinesh Kumar Singh, Presiding Officer.

Appearances:

For the Employers : Sri D.K. Verma, Adv.

For the workman. : None

State : Jharkhand. Industry:- Coal

Dated-30.09.2019

AWARD

By Order No.L-20012/256/1999 -IR (C-I) dated 20/12/1999 the Central Government in the Ministry of Labour has, in exercise of the powers conferred by clause (d) of sub-section (1) and sub –section (2A) of Section 10 of the Industrial Disputes Act, 1947, referred the following disputes for adjudication to this Tribunal:

SCHEDULE

"Whether the action of the management of Loyabad Coke Plant under Sijua Area of M/s. BCCL in denying to regularize Gorelal Dusad as Tub Checker is proper and justified? If not, to what relief the concerned workman is entitled and from what date?"

2. After receipt of the reference, both parties were noticed and both parties appeared for certain dates, but subsequently the workman left appearing before the Tribunal. Thereafter regd. notices were issued to the workman but even then no one appeared on behalf of the workman. Case is pending since long and workman is not appearing before Tribunal. so, it is felt that workman has lost his interest to resolve the matter. Hence No Dispute Award is passed. Communicate.

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D. K. SINGH, Presiding Officer

नई दिल्ली, 5 नवम्बर, 2019

का.आ. 1947.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार मैसर्स बी.सी.सी.एल. के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय संख्या–1, धनबाद के पंचाट (संदर्भ संख्या 23/2005) को प्रकाशित करती है, जो केन्द्रीय सरकार को 28.10.2019 को प्राप्त हुआ था।

[सं. एल–20012/257/2004–आईआर (सी–I)]

एस. सी. राय, अनुभाग अधिकारी

New Delhi, the 5th November, 2019

S.O. 1947.—In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the award of the Central Government Industrial Tribunal-cum-Labour Court No. 1, Dhanbad (Ref. No. 23/2005) as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of M/s. BCCL and their workmen, which was received by the Central Government on 28.10.2019.

[No. L-20012/257/2004-IR(C-I)]

S. C. RAY, Section Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL NO. 1, DHANBAD

In the matter of reference U/S 10 (1) (d) (2A) of I.D.Act. 1947

Reference: No. 23/2005

Employer in relation to the management of Bastacolla Area of M/S. BCCL.

AND

Their workman

Present: Shri Dinesh Kumar Singh, Presiding Officer

Appearances:

For the Employers : None

For the workman. : None

State : Jharkhand. Industry:- Coal

Dated 30.09.2019

AWARD

By Order No.L-20012/257/2004 -IR (C-I) dated 24/03/2005 the Central Government in the Ministry of Labour has, in exercise of the powers conferred by clause (d) of sub-section (1) and sub –section (2A) of Section 10 of the Industrial Disputes Act, 1947, referred the following disputes for adjudication to this Tribunal:

SCHEDULE

"Whether the action of the management of Bera Colliery of M/s BCCL in dismissing Sri Vijay Kumar, SDL Helper from the services of the company vide order dated 31.10.2003 is justified? If not, to what relief is the concerned workman entitled?"

2. After receipt of the reference, both parties were noticed and both parties appeared for certain dates, but subsequently both of them left appearing before this Tribunal. Thereafter again a notice was issued to both the parties and the notices issued to concerned union is returned with endorsement of "Insufficient Address". The Case is pending since 25/04/2005 and workman is not appearing before the Tribunal. It appears that the workman has lost his interest to resolve the matter. Hence "No Dispute" Award is passed. Communicate.

D. K. SINGH, Presiding Officer

नई दिल्ली, 5 नवम्बर, 2019

का.आ. 1948.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार मैसर्स बी.सी.सी.एल. के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय संख्या–2, धनबाद के पंचाट (संदर्भ संख्या 23/2015) को प्रकाशित करती है, जो केन्द्रीय सरकार को 21.10.2019 को प्राप्त हुआ था।

[सं. एल–20012/06/2015–आईआर (सी–I)]

एस. सी. राय, अनुभाग अधिकारी

New Delhi, the 5th November, 2019

S.O. 1948.—In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the award of the Central Government Industrial Tribunal-cum-Labour Court No. 2, Dhanbad (Ref. No. 23/2015) as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of M/s. BCCL and their workmen, which was received by the Central Government on 21.10.2019.

[No. L-20012/06/2015-IR(C-I)]

S. C. RAY, Section Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL (NO. 2), AT DHANBAD

PRESENT : Dr. S. K.Thakur, Presiding Officer

In the matter of an Industrial Dispute under Section 10(1) (d) of the I.D.Act., 1947

REFERENCE NO 23 OF 2015.

PARTIES: : The Joint Secretary,,
Dhanbad Colliery Karmachari Sangh ,
P.B.Area,At: Kerkand Bazar,
PO: Kusunda,Dhanbad-828106
(Jharkhand).

Vs.

The General Manager,
P.B.Area of M/s BCCL,
PO: Kusunda, Dhanbad-828116.

Order No. L-20012/06/2015-IR(CM-I) dt.08.04.2015

APPEARANCES :

On behalf of the workman/Union : None

On behalf of the Management : Mr.D.K.Verma. Ld. Advocate

State : Jharkhand Industry : Coal

Dated, Dhanbad, the 26th September 2019

AWARD

The Government of India, Ministry of Labour, in exercise of the powers conferred on them under Sec.10(1)(d) of the I.D. Act.,1947 has referred the following dispute to this Tribunal for adjudication vide their Order No**. L-20012/06/2015-IR(CM-I) dt.08.04.2015**

SCHEDULE

''Whether the action of the Management of P.B.Area of M/s BCCL in denial to regularize Sri Dilip Kumar Bose in the post of Switch Board Attendant is fair and justified? To what relief the concerned workman is entitled to?"

On receipt of the Order No**. L-20012/06/2015-IR (CM-I) dt.08.04.2015** of the reference from the Government of India, Ministry of Labour & Employment, New Delhi for adjudication of the dispute, it was registered as Reference case No. 23 of 2015 on 16.04.2015 and accordingly an order to that effect was passed to issue notices through the Registered Post to the parties concerned, directing them to appear before the Tribunal on the date fixed and to file their written statements along with the relevant documents. In pursuance of the said order, notices by the Registered Post were sent to the parties concerned.

2. The Instant case was scheduled on 17.09.2019 to come up for hearing on the matter of filing W.S. by the Sponsoring Union/workmen (Petitioner). Neither the Representative of the Sponsoring Union nor the workman concerned was present on call. O.P. /Management represented by Mr. D. K.Verma, Ld. Advocate was present. Despite issuance of the Regd Notice dt. 15.06.2015 to the address of the Sponsoring Union/workmen referred on the Order of the Reference neither the Sponsoring Union nor the concerned workman-Sri Dilip Ghosh appeared nor did file the awaited WS. Hearing was adjourned on several dates on 02.07.2015, 14.07.2015, 30.09.2015, 07.12.2015, 29.02.2016, 14.4.15, 04.2016, 19.05.2016, 05.07.2016, 24.08.2016, 27.12.2016, 31.01.2017, 23.03.2017, 16.05.2017, 11.07.2017, 07.09.2017, 05.10.2017, 23.08.2019. The workman was allowed sufficient opportunities to come out with Statement of claim with relevant documents ,list of reliance, and witnesses ,if any, on the dispute raised. However, the W.S. should have been filed within 15 days of the receipt of the order as stated in the Order of Reference from Government of India, which reads as follows :

> "**The Parties raising the dispute shall file a statement of claim complete with relent documents, list of reliance and witnesses with the Tribunal within fifteen days of the receipt of this order of reference and also forward a copy of such statement to each one of the opposite parties involved in this dispute under rule 10(b) of the Industrial Disputes (Central),rules,1957**. ''

Thus, the Dispute under reference appears no longer in existence in the event of not filing the Written Statement itself. The proceeding has been stagnated over filing the WS for years together. Court proceeding shall usually be deemed to have commenced from the date of its Registration and issuance of Notices.

3. Mr. D.K.Verma. Ld. Advocate representing the O.P. / Management was present. During the hearing on 17.09.2019 the Tribunal has become functus officio to press the OP/Management for any matter till the Written Statement is filed by the Sponsoring Union/workmen.

4. On the face of the facts it is apparent that neither the workmen concerned nor his Sponsoring Union showed their seriousness/willingness to proceed with the instant case ever since 29.05.2013 the date provided for filing of Written Statement , the first stage of proceeding of the Reference Case. The Tribunal does not hold any justification to put the matter hanging merely for date even after providing ample opportunities. Considering the circumstances of the fact the Reference case is liable `to be disposed off without any representation in the matter on which Industrial Dispute had been raised. Under such circumstances the case is closed concluding that the Party which had raised the dispute does not need any relief from the O.P./Management of P.B. Area of M/s. BCCL, Dhanbad.

S. K.THAKUR, Presiding Officer

नई दिल्ली, 5 नवम्बर, 2019

का.आ. 1949.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार मैसर्स बी.सी.सी.एल. के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय संख्या–2, धनबाद के पंचाट (संदर्भ संख्या 24/2015) को प्रकाशित करती है, जो केन्द्रीय सरकार को 21.10.2019 को प्राप्त हुआ था।

[सं. एल–20012/09/2015–आईआर (सीएम–I)]

एस. सी. राय, अनुभाग अधिकारी

New Delhi, the 5th November, 2019

S.O. 1949.—In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the award of the Central Government Industrial Tribunal-cum-Labour Court No. 2, Dhanbad (Ref. *No. 24/2015*) as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of M/s. BCCL and their workmen, which was received by the Central Government on 21.10.2019.

[No. L-20012/09/2015-IR(CM-I)]

S. C. RAY, Section Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL (NO. 2), AT DHANBAD

PRESENT : Dr. S. K. Thakur, Presiding Officer

In the matter of an Industrial Dispute under Section 10(1) (d) of the I.D.Act., 1947

REFERENCE NO 24 OF 2015

PARTIES: : The Branch Secretary,
Janta Mazdoor Sangh,,
Vihar Building, PO: Jharia,,
Dhanbad -828111.
Jharkhand).

Vs.

The General Manager,
Lodna Area of M/s. BCCL,
PO: Khas Jeenagora , Dhanbad-828115.

Order No. L-20012/09/2015-IR(CM-I) dt.08.04.2015

APPEARANCES :

On behalf of the workman/Union : None

On behalf of the Management : Mr.Ganesh Prasad, Ld. Advocate

State : Jharkhand **Industry : Coal**

Dated, Dhanbad, the 24th September, 2019

AWARD

The Government of India, Ministry of Labour & Employment , in exercise of the powers conferred on it under Sec.10(1)(d) of the I.D. Act.,1947 has referred the following dispute to this Tribunal for adjudication vide their **Order No. L-20012/09/2015-IR(CM-I) dt.08.04.2015**

SCHEDULE

''Whether the action of the Management of North Tisra Project under Lodna Area of M/s BCCL in not regularizing off Shri Shankar Das and 06 others to the post of Showel Operator is fair and justified? To what relief the concerned workmen are entitled to?"

On receipt of the. **Order No. L-20012/09/2015-IR (CM-I) dt.08.04.2015 of** the reference from the Government of India, Ministry of Labour & Employment, New Delhi for adjudication of the dispute, it was registered as Reference case No. 24 of 2015 on 16.04.2015 in this Tribunal and accordingly an order to that effect was passed to issue notices through the Registered Post to the parties concerned, directing them to appear before the Tribunal on the date fixed and to file their written statements along with the relevant documents. In pursuance of the said order notices by the Registered Post were sent to the parties concerned.

2. The Instant case was scheduled on date to deal with the matter of filing of W.S. with none appearance from either side. Though Mr Ganesh Prasad, Ld. Advocate representing for Management appeared on few previous dates. 24.08.2016 and 28.10.2016, and later on 05.10.2017 after Mr. U.N.Lal, Ld. Advocate who was representing the case since its inception .But so far as Representation from Sponsoring Union/workmen side remained Nil till date since registration of the Reference case, whereas the Written Statement of Claim from the party who has raised the dispute should have been filed within 15 days of the receipt of the order as stated in the Order of Reference from Government of India, which reads as follows :

"**The Parties raising the dispute shall file a statement of claim complete with relent documents, list of reliance and witnesses with the Tribunal within fifteen days of the receipt of this order of reference and also forward a copy of such statement to each one of the opposite parties involved in this dispute under rule 10(b) of the Industrial Disputes (Central), rules, 1957**. ''

3. Although several adjournments was taken by the Sponsoring Union/workmen over filing of WS it stagnated over years together merely for filing the Written Statement of Claim despite usual formal notice sent on 15.062015 at the address of the Sponsoring Union/workman as referred in the Order of reference. During course of the hearings adjournments were provided on dt. 02.07.2015, 14.07.2015, 30.09.2015, 07.12.2015, 29.02.0216, 14.04.2016, 15.04.2016, 19.05.2016, 05.07.2016, 28.04.2016, 28.10.2016, 28.10.2016, 22.12.2016 31.01.2017, 23.03.2017, 16.05.2017, 11.07.2017, 07.09.2017, 05.10.2017, 24.11.2017, 23.08.2019 and lastly on 17.09.2019, the day, it stands reserved for final order. But the Sponsoring Union/workmen proved failure to file the W.S. despite availing so much opportunities.

4. In the light of the facts and materials on record, it has been absolutely clear that neither the workmen concerned nor their Sponsoring Union ever showed seriousness/willingness to proceed with the instant case since 02.07.2015. The total facts moves to indicate that the Sponsoring Union/workmen is not at all interested to proceed with the case rather they are simply inclined of adjournment after adjournments and, even on this day i.e., on 17.09.2019 took no steps. It is of no use to drag the matter any further. The approach and conduct of the Sponsoring Union /workmen seems to be reluctance to get to the finality through adjudication as more than fifteen opportunities were availed by the Union but could not file even the desired W.S. of claim. Considering the circumstances of the fact the Reference case deserves to be disposed off for want of merits on the footing the Industrial Dispute had been raised. Under such circumstances the case is closed on presumption that no relief needs to be granted to the concerned workman by the Management (Opposite Party).

S. K.THAKUR, Presiding Officer

नई दिल्ली, 5 नवम्बर, 2019

का.आ. 1950.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार मैसर्स बी.सी.सी.एल. के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय संख्या–1, धनबाद के पंचाट (संदर्भ संख्या 75/2000) को प्रकाशित करती है, जो केन्द्रीय सरकार को 28.10.2019 को प्राप्त हुआ था।

[सं. एल–20012/340/1999–आईआर (सी–I)]

एस. सी. राय, अनुभाग अधिकारी

New Delhi, the 5th November, 2019

S.O. 1950.—In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the award of the Central Government Industrial Tribunal-cum-Labour Court No. 1, Dhanbad (Ref. No. 75/2000) as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of M/s. BCCL and their workmen, which was received by the Central Government on 28.10.2019.

[No. L-20012/340/1999-IR(C-I)]

S. C. RAY, Section Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL NO. 1, DHANBAD

In the matter of reference U/S 10 (1) (d) (2A) of I.D.Act. 1947

Reference: No. 75/2000

Employer in relation to the management of Sijua Area of M/S. B.C.C.L.

AND

Their workman

Present: Shri Dinesh Kumar Singh, Presiding Officer

Appearances:

For the Employers : Sri D.K. Verma, Adv.

For the workman. : Sri N.G. Arun, Rep.

State : Jharkhand. Industry:- Coal

Dated 30.09.2019

AWARD

By Order No.L-20012/340/1999 -(C-I) dated 28/01/2000 the Central Government in the Ministry of Labour has, in exercise of the powers conferred by clause (d) of sub-section (1) and sub–section (2A) of Section 10 of the Industrial Disputes Act, 1947, referred the following disputes for adjudication to this Tribunal:

SCHEDULE

"Whether the action of the management of Tetulmari Colliery of M/s. BCCL in not referring Shri Bipra Nayak to Apex Medical Board for assessment of his age as per I.I. No. 76 of JBCCI is proper and justified? If not, to what relief the concerned workman is entitled?"

2. After receipt of the reference, both parties were noticed and both the parties appeared for certain dates but subsequently workmen left taking step in this case. Further in course of hearing of the case, the General Secretary of Sponsoring Union has informed that workman is not interested in contesting the case. It is felt that the workman has lost his interest to resolve the matter. Hence "No dispute" award is passed. Communicate.

D. K. SINGH, Presiding Officer

नई दिल्ली, 5 नवम्बर, 2019

का.आ. 1951.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार मैसर्स बी.सी.सी.एल. के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय संख्या–1, धनबाद के पंचाट (संदर्भ संख्या 78/1999) को प्रकाशित करती है, जो केन्द्रीय सरकार को 28.10.2019 को प्राप्त हुआ था।

[सं. एल–20012/520/1998–आईआर (सी–I)]

एस. सी. राय, अनुभाग अधिकारी

New Delhi, the 5th November, 2019

S.O. 1951.—In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the award of the Central Government Industrial Tribunal-cum-Labour Court No.1, Dhanbad (Ref. No. 78/1999) as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of M/s. BCCL and their workmen, which was received by the Central Government on 28.10.2019.

[No. L-20012/520/1998-IR(C-I)]

S. C. RAY, Section Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL NO. 1, DHANBAD

In the matter of reference U/S 10 (1) (d) (2A) of I.D.Act. 1947

Reference: No. 78/1999

Employer in relation to the management of Moonidih Area of M/S. BCCL.

AND

Their workman

Present: Shri Dinesh Kumar Singh, Presiding Officer

Appearances:

For the Employers : Sri D.K. Verma, Adv.

For the workman. : None

State : Jharkhand. Industry:- Coal

Dated- 30.09.2019

AWARD

By Order No.L-20012/520/1998 –IR (C-I) dated 17/05/1999 the Central Government in the Ministry of Labour has, in exercise of the powers conferred by clause (d) of sub-section (1) and sub –section (2A) of Section 10 of the Industrial Disputes Act, 1947, referred the following disputes for adjudication to this Tribunal:

SCHEDULE

"Whether the action of the Management of BCCL, Moonidih Area, in not categorizing Sh. Mohan Prasad and 51 others (as per list) as per the recommendation of the selection committee constituted for the purpose and not paying wages appropriate to such category, is justified? If not to what relief the concerned workmen are entitled?"

Sl.	Name	Previous work done at Loyabad Power House	Job recommend by the Selection Committee
1.	Sri Mohan Prasad	Black Smithy	C.P.P. Workshop
2.	Sri Nirmal Kr. Patra	Casual worker	33KV Switch Yard Opt.
3.	Sri Jamal Khan	Fireman	Boiler House Oprn.
4.	Sri Safdar Ali	Boiler Stocker	Boiler House Oprn.
5.	Sri Dasrath	Ash Coolie	Water Treatment Plant
6.	Sri Rajdeo Yadav	Store Coolie	Store Helper
7.	Sri Ali Haider	Pump Operator Khalasi	C.W. Pump Oprn.
8.	Sri Baijnath	Ash Coolie	Helper for Pump Opt.
9.	Sri Ram Chandra Thakur	Gen. Mazdoor	Helper Pump Opt.
10.	Sri Chandeshwar Paswan	Dispatch Clerk	S.B. Opt. or Pump Opt. or Coal Clerk
11.	Sri Motilal Bahadur	Helper/Mazdoor	To be trained as Pump Opt.
12.	Sri Ayodhya Yadav	------Do-------	----------Do----------
13.	Sri Rahaman Khan	Boiler House Khalasi 2nd Class Certificate(Boiler)	Boiler House Operation
14.	Sri Matin	Ash Pit Coolie	C.H.P. Helper
15.	Sri Milan Mazumdar	Switch Bd. Opt.	Control Bd. Optr.
16.	Sri Krishna Prasad-I	--------Do---------	ESP Control room Optr.
17.	Sri Ashok Kr. Bardan	---------Do----------	---------Do----------
18.	Sri Trilochan	Condensor Pump Khalasi	C.E.P. Pump Optr.
19.	Sri Anis Khan	----------Do----------	----------Do----------
20.	Sri Somanth Chatterjee	S.B. Optr.	ESP Control Room Optr.
21.	Sri Binay Kumar Pandey	----------Do----------	----------Do----------
22.	Sri Manik Chand Tiwary	----------Do----------	33KV Switch Yard Optr.
23.	Sri BuluSutradhar	Elect. Helper	Electrical Maintn.
24.	Sri Haradhan Mahato	Pump Khalasi	River Pump Optr.
25.	Sri Ashok kr. Pandey	S.B. Ptn.	HCP Control Room
26.	Sri Chandra Deo	Water Supply Lab Coolie	Drinking Water Plant
27.	Sri Durga Bahadur	----------Do---------	----------Do-------
28.	Sri Sher Mohammad	Boiler House Cleaner	River Pump Operator
29.	Sri Shakeel	Coal Ash Coolie	C.H.P. Optr.
30.	Sri Ram Lal	----------Do----------	----------Do----------
31.	Sri Anwar Khan	Condensor Pump Khalasi	River Pump Optr.

32.	Sri Rahis Ahmad Khan	----------Do---------	Condensor Pump Optr.
33.	Sri Ram Lakhan No.2	Ash Pit Coolie	----------Do----------
34.	Sri Naushad Alam	Fitter Helper	A/C Operator
35.	Smt. Tannu	Sweeper	Sweeper
36.	Sri Dilip	--------Do------	----------Do----------
37.	Sri Nirmal Bahadur	Guard	33KV O/H Line Maint.
38.	Sri Jamaluddin	Welder Helper	Welder Helper
39.	Sri Samsul	Ash Coolie/Turner Helper	W/Shop
40.	Sri Saffique No.2	Acid Dozer	Water Treatment Plant
41.	Sri Jai Prakash	Helper	Mech. Fitter
42.	Sri Jagdish Yadav	Coal Ash Coolie	General Mazdoor
43.	Sri Muslim Beg	Ash Coolie/Boiler(H)	Boiler Maint.
44.	Sri Durga Prasad	Coal Coolie	-------Do-------
45.	Sri Ram Naresh Singh	Pump Khalasi	Boiler Feed Pump
46.	Sri Prithivi Pal-2	Mazdoor Boiler	Boiler Feed Pump Optr.
47.	Sri Uday Kankal	Blacksmithy	Workshop
48.	Sri Dasrath Shaw	Pump Khalasi	Boiler Feed Pump
49.	Sri Sadhan Roy	Elect. Helper	MCC operator
50.	Sri Ram Ranjan Mukherjee	Time Keeper	Coal Clerk
51.	Sri Kamal Sutradhar	O/H Line Work	33KV OH Line
52.	Sri Jeeblal	Ch. Lab. Helper	Chemical Lab Helper

2. After receipt of the reference, both parties were noticed and both parties appeared for certain dates, but subsequently workman left appearing before this Tribunal. Thereafter two notices were issued to the workmen and one of the notices returned with endorsement that "Insufficient Address". The Case is pending since 15/06/2019 and workmen are not appearing before the Tribunal. It appears that the workmen have lost their interest to resolve the matter. Hence "No Dispute" Award is passed. Communicate.

D. K. SINGH, Presiding Officer

नई दिल्ली, 5 नवम्बर, 2019

का.आ. 1952.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार मैसर्स सी.सी.एल. के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय संख्या–1, धनबाद के पंचाट (संदर्भ संख्या 88/2000) को प्रकाशित करती है, जो केन्द्रीय सरकार को 28.10.2019 को प्राप्त हुआ था।

[सं. एल–20012/119/1999–आईआर (सी–I)]

एस. सी. राय, अनुभाग अधिकारी

New Delhi, the 5th November, 2019

S.O. 1952.—In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the award of the Central Government Industrial Tribunal-cum-Labour Court No.1, Dhanbad (Ref. No. 88/2000) as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of M/s. CCL and their workmen, which was received by the Central Government on 28.10.2019.

[No. L-20012/119/1999-IR(C-I)]

S. C. RAY, Section Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL NO. 1, DHANBAD

In the matter of reference U/S 10 (1) (d) (2A) of I.D.Act. 1947

Reference: No. 88/2000

Employer in relation to the management of Barkakana Area of M/S. C.C.L.

AND

Their workman

Present: Shri Dinesh Kumar Singh, Presiding Officer

Appearances:

For the Employers : Sri D.K. Verma, Adv.

For the workman. : None

State : Jharkhand. Industry:- Coal

Dated :-30.09.2019

AWARD

By Order No.L-20012/119/1999 -IR (C-I) dated 24/08/1999 the Central Government in the Ministry of Labour has, in exercise of the powers conferred by clause (d) of sub-section (1) and sub –section (2A) of Section 10 of the Industrial Disputes Act, 1947, referred the following disputes for adjudication to this Tribunal:

SCHEDULE

"Whether the action of the management to first correct the date of birth as 05.07.1941 on the basis of certificate Produced by the workmen and subsequent reverted to old one i.e. 04.03.1938 and retire Shri Gulab Singh on the basis of date of birth initially recorded at the time of joining service is proper and justified? If no, what relief the workmen is entitled to?"

2. After receipt of the reference, both parties were noticed and both parties appeared for certain dates, but subsequently workman left appearing before this Tribunal. Thereafter again a notice was issued to the parties and one of the notices returned with endorsement "Addressee not found". The Case is pending since 23/02/2000 and workman is not appearing before the Tribunal. It appears that the workman has lost his interest to resolve the matter. Hence "No Dispute" Award is passed. Communicate.

D. K. SINGH, Presiding Officer

नई दिल्ली, 5 नवम्बर, 2019

का.आ. 1953.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार मैसर्स बी.सी.सी.एल. के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय संख्या–2, धनबाद के पंचाट (संदर्भ संख्या 121/2013) को प्रकाशित करती है, जो केन्द्रीय सरकार को 21.10.2019 को प्राप्त हुआ था।

[सं. एल–20012/19/2013–आईआर (सीएम–I)]

एस. सी. राय, अनुभाग अधिकारी

New Delhi, the 5th November, 2019

S.O. 1953.—In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the award of the Central Government Industrial Tribunal-cum-Labour Court No. 2, Dhanbad (Ref. No. 121/2013) as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of M/s. BCCL and their workmen, which was received by the Central Government on 21.10.2019.

[No. L-20012/19/2013-IR(CM-I)]

S. C. RAY, Section Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL (NO. 2), AT DHANBAD

PRESENT : Dr. S. K. Thakur, Presiding Officer

In the matter of an Industrial Dispute under Section 10(1) (d) of the I.D.Act., 1947

REFERENCE NO 121 OF 2013

PARTIES: : The Secretary,
Bihar Colliery Kamgar Union,
Jharnapara, Hirapur, Dhanbad-826001
(Jharkhand).

Vs.

The General Manager,
C.V. Area of M/s BCCL
PO; Barakar Burdwan..

Order No**. L-20012/19/2013-IR(CM-I) dt.20.05.2013**

APPEARANCES :

On behalf of the workman/Union : None

On behalf of the Management : None

State : Jharkhand Industry : Coal

Dated, Dhanbad, the 30th September, 2019

AWARD

The Government of India, Ministry of Labour, in exercise of the powers conferred on them under Sec.10(1)(d) of the I.D. Act.,1947 has referred the following dispute to this Tribunal for adjudication vide their Order No**. L-20012/19/2013-IR (CM-I) dt.20.05.2013.**

SCHEDULE

''Whether the action of the Management of C.V. Area of M/s BCCL in supersession in promotion in respect of Sri Khartik Chandra Tiwary is justified and fair? To what relief the concerned workman is entitled to?"

On receipt of the Order No. **L-20012/19/2013-IR (CM-I) dt.20.05.2013** the reference from the Government of India, Ministry of Labour & Employment, New Delhi for adjudication of the dispute, it was registered as Reference case No. 121 of 2013 on 12.06.2013 before this Tribunal and accordingly an order to that effect was passed to issue notices through the Registered Post to the parties concerned, directing them to appear before the Tribunal on the date fixed and to file their written statements along with the relevant documents. In pursuance of the said order, notices by the Registered Post were sent to the parties concerned.

2. The Instant case was put up on date , i.e., 17.09.2019 for taking further step in the matter of fling of Written Statement of Claim but none appeared from either side on called nor the long awaited Written Statement of Claim by the Sponsoring Union/Workmen was filed . The Case is stale one, dates back to the years 2013. Formal notices dt. 03.07.2013, 30.07.2019 and 30.08.2019 were sent at the address of the Sponsoring Union directing to appear in person or through Representative informing therein the Case will be decided ex-parte if Written Statement of claim is not filed within the stipulated time period .In spite of two successive notices sent currently upon the address of the Sponsoring Union the matter remained unrepresented. Finally on 17.09.2019 the Instant Reference Case stands reserved for order .Noteworthy the, W.S, from the party who has raised the dispute , should have been filed within 15 days of the receipt of the order as stated in the Order of Reference from Government of India which reads as follows:

"**The Parties raising the dispute shall file a statement of claim complete with relent documents, list of reliance and witnesses with the Tribunal within fifteen days of the receipt of this order of reference and also forward a copy of such statement to each one of the opposite parties involved in this dispute under rule 10(b) of the Industrial Disputes (Central),rules,1957**.''

3. On the previous dates on 19.08.2013,21.10.2013,10.12.13 , 29.07.2019 and 21.08.2019 and lastly 17.09.2019 several sittings were held and adjournments were given on different pretext with no sign of initiative on the part of the

Sponsoring Union/workmen .The status of the Case revolves around filing of written statement of claim by the Sponsoring Union/workmen pending since long back. So long the representation from the Management side none had approached so far whereas appearance on their part does not matter much in the event of non-filing of Written Statement of Claim.

4. The case under Reference is concerned about the alleged action of supersession in promotion of Shri Kartik Chandra Tiwary by the Management of C.V. Area of M/s BCCL, Dhanbad is justified or not ,and the relief the workman need by challenging action ?

5. On the totality of the facts recorded there is only one opinion emerged out that the Sponsoring Union /workmen(Petitioner) had shown no interest to move ahead either by appearance or by filing long pending Written Statement Claim. On perusal of materials available on record it is established that the workman/Sponsoring Union is neither serious nor interested in continuance of the dispute raised by it .So the Tribunal has no option but to close down due to non-submission of Written Statement of Claim by the Sponsoring Union/workman till the last opportunity provided. Accordingly, the Instant Case is hereby disposed off for want of unwillingness of the Sponsoring Union/workman declaring the dispute non-est.

S. K. THAKUR, Presiding Officer

नई दिल्ली, 5 नवम्बर, 2019

का.आ. 1954.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार मैसर्स बी.सी.सी.एल. के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय संख्या–1, धनबाद के पंचाट (संदर्भ संख्या 134/2000) को प्रकाशित करती है, जो केन्द्रीय सरकार को 28.10.2019 को प्राप्त हुआ था।

[सं. एल–20012/476/1999–आईआर (सी–I)]

एस. सी. राय, अनुभाग अधिकारी

New Delhi, the 5th November, 2019

S.O. 1954.—In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the award of the Central Government Industrial Tribunal-cum-Labour Court No. 1, Dhanbad (Ref. No. 134/2000) as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of M/s. BCCL and their workmen, which was received by the Central Government on 28.10.2019.

[No. L-20012/476/1999-IR(C-I)]

S. C. RAY, Section Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL NO. 1, DHANBAD

In the matter of reference U/S 10 (1) (d) (2A) of I.D.Act. 1947

Reference: No. 134/2000

Employer in relation to the management of 5/6 Pit K.B. (HM) under P.B. Area of M/S. B.C.C.L.

AND

Their workman

Present: Shri Dinesh Kumar Singh, Presiding Officer

Appearances:

For the Employers : None

For the workman. : None

State : Jharkhand. Industry:- Coal

Dated 30.09.2019

AWARD

By Order No.L-20012/476/1999 -IR (C-I) dated 28/02/2000 the Central Government in the Ministry of Labour has, in exercise of the powers conferred by clause (d) of sub-section (1) and sub –section (2A) of Section 10 of the Industrial Disputes Act, 1947, referred the following disputes for adjudication to this Tribunal:

SCHEDULE

"Whether the demand of the Union before the Management of 5/6 Pits Colliery under P.B. Area of M/s. BCCL to regularize Sri Ram Bilas Paswan, M/L Loader as Loading Clerk from the date of his engagement as Loading Clerk is proper and justified? If yes, to what relief and consequential benefits is the concerned workman entitled?"

2. After receipt of the reference, both parties were noticed and both parties appeared for certain dates, but subsequently both of them left appearing before this Tribunal. Thereafter again a notice was issued to both the parties and one of the notices issued to the workman returned with endorsement "addressee not found". The Case is pending since long and workman is not appearing before the Tribunal. It appears that the workmen has lost his interest to resolve the matter. Hence "No Dispute" Award is passed. Communicate.

D. K. SINGH, Presiding Officer

नई दिल्ली, 5 नवम्बर, 2019

का.आ. 1955.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार मैसर्स बी.सी.सी.एल. के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय संख्या–1, धनबाद के पंचाट (संदर्भ संख्या 148/2000) को प्रकाशित करती है, जो केन्द्रीय सरकार को 28.10.2019 को प्राप्त हुआ था।

[सं. एल–20012/519/1999–आईआर (सी–I)]

एस. सी. राय, अनुभाग अधिकारी

New Delhi, the 5th November, 2019

S.O. 1955.—In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the award of the Central Government Industrial Tribunal-cum-Labour Court No. 1, Dhanbad (Ref. No. 148/2000) as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of M/s. BCCL and their workmen, which was received by the Central Government on 28.10.2019.

[No. L-20012/519/1999-IR(C-I)]

S. C. RAY, Section Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL NO. 1, DHANBAD

In the matter of reference U/S 10 (1) (d) (2A) of I.D.Act. 1947

Reference: No. 148/2000

Employer in relation to the management of Katras Area of M/S. B.C.C.L.

AND

Their workman

Present: Shri Dinesh Kumar Singh, Presiding Officer

Appearances:

For the Employers : Sri D.K. Verma, Adv.

For the workman. : Sri N.G. Arun, Rep.

State : Jharkhand. Industry:- Coal

Dated :-30.09.2019

AWARD

By Order No.L-20012/519/1999 -(C-I) dated 02/03/2000 the Central Government in the Ministry of Labour has, in exercise of the powers conferred by clause (d) of sub-section (1) and sub–section (2A) of Section 10 of the Industrial Disputes Act, 1947, referred the following disputes for adjudication to this Tribunal:

SCHEDULE

"Whether the date of birth claimed by the union as 02.01.1948 in respect of Shri Khagan Mahato, workman of West Mudidih Colliery of M/s. BCCL is correct? If so, to what relief is the workman entitled?"

2. After receipt of the reference, both parties were noticed and both the parties appeared for certain dates but subsequently workmen left taking step in this case. Further in course of hearing of the case, the General Secretary of Sponsoring Union has informed that workman is not interested in contesting the case. It is felt that the workman has lost his interest to resolve the matter. Hence "No dispute" award is passed. Communicate.

D. K. SINGH, Presiding Officer

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